

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#36/Supl
Deposition
of BIRD

In re the Reissue Application of:

BILL L. DAVIS and JESSE S. WILLIAMSON

2-9-01
L. Spruell

For Reissue of U. S. Patent 5,630,363
Issued May 20, 1997
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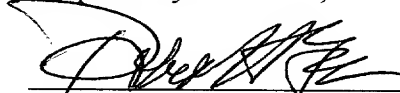
SUPPLEMENTAL BIRD DEPOSITION - 11/20/00

To: The Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

Enclosed is the supplemental deposition of John W. Bird. It has been declassified in its entirety, including all exhibits but Exhibit 39 (pages PRI 01672-3, which are produced.

Respectfully submitted,



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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PRINTING RESEARCH, INC. X
HOWARD W. DEMOORE and X
RON M. RENDLEMAN X
VS. X CIVIL ACTION NO.
X 3-99CV1154-M
X
WILLIAMSON PRINTING CORP., X
BILL L. DAVIS and X
JESSE WILLIAMSON X

VIDEOTAPED
ORAL DEPOSITION

OF

JOHN BIRD

Volume 2

November 20, 2000

ANSWERS AND VIDEOTAPED DEPOSITION OF JOHN BIRD,
produced as a witness at the instance of the Plaintiff,
being duly sworn, was taken in the above-styled and
numbered cause on the 20th day of November, 2000, from
9:23 a.m. to 3:37 p.m., before Christina Cheatham, a
Certified Shorthand Reporter in and for the State of
Texas, via machine shorthand, at the offices of Worsham,
Forsythe, Wooldridge, L.L.P., located at 1601 Bryan
Street, Energy Plaza, 30th Floor, in the City of Dallas,
County of Dallas and State of Texas.

COPY

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ALSO PRESENT: Mr. Howard W. DeMoore
Mr. Ron Rendleman
Ms. Kirby Read, Videographer

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P R O C E E D I N G S

VIDEOGRAPHER: We're on the record at 9:23.

Will the court reporter please swear in the witness.

JOHN BIRD,

having been sworn to testify the truth, testified as follows:

MR. WILSON: We need to identify counsel that are present. My name is Stephen Wilson, Locke Liddell & Sapp, we're representing the plaintiffs, Printing Research, Incorporated, Howard DeMoore, and Ronald Rendleman.

MR. HARRIS: Bill Harris, same firm, same representation.

MR. SWEENEY: Marty Sweeney, Cozen & O'Connor, for the plaintiffs.

MR. PINKERTON: John Pinkerton, Worsham, Forsythe & Wooldridge, representing the defendants.

MR. FALK: Bob Falk, Falk & Fish, for the defendants.

EXAMINATION

BY MR. WILSON:

Q. Good morning, Mr. Bird?

A. Good morning.

Q. Can you state your name and address again, for the record.

1 A. My name is John Bird and my address is 9 Sasqua
2 Trail, Weston, Connecticut, 06883.

3 Q. And are you the same Mr. Bird that was here on
4 September 12th to give a deposition?

5 A. Yes, I am.

6 Q. How was your flight?

7 A. Very good, thank you.

8 Q. I'm going to show you a document -- when was
9 your flight?

10 A. It was Sunday -- Saturday, sorry, Saturday
11 evening, Saturday late evening.

12 Q. And have you spent any time prior to this
13 deposition talking with Mr. Pinkerton?

14 A. Yes.

15 Q. About how many hours?

16 A. Six, I guess, somewhere in that region.

17 Q. And did you spend any time talking with Mr. Falk
18 prior to this deposition?

19 A. Yes.

20 Q. About how long did you spend with Mr. Falk?

21 A. About the same time.

22 Q. Was that time -- is that the same six hours?

23 A. Approximately. There was a time when Mr. Falk
24 wasn't there.

25 MR. FALK: The Dallas Cowboy game.

1 Q. (By Mr. Wilson) Was there any time when
2 Mr. Falk was there and Mr. Pinkerton was not?

3 A. No.

4 Q. So Mr. Pinkerton is the culprit; is that right?

5 MR. PINKERTON: Object to the form.

6 MR. WILSON: Withdrawn.

7 Q. (By Mr. Wilson) I'm going to show you a
8 document titled reissue applicants first submission of
9 deposition testimony and submission of supplemental
10 declarations, and we'll ask the court reporter to mark
11 that as Exhibit 21. We're counting the exhibits forward
12 from the last deposition that you gave on September 12th.

13 (Deposition Exhibit 21 marked)

14 Q. (By Mr. Wilson) Have you seen this document
15 before, Mr. Bird?

16 A. Yes.

17 Q. When was that?

18 MR. PINKERTON: I would like for the
19 witness to look at this document completely.

20 MR. WILSON: We'll note for the record that
21 I've not attached the exhibits to it. The exhibits make
22 it about four inches thick.

23 THE WITNESS: I have not seen it, actually.

24 Q. (By Mr. Wilson) You have not seen it?

25 A. No.

1 Q. Okay. Well, I just want to ask you about one
2 page of it. There's a statement on page nine. Would you
3 turn to page nine, please.

4 Do you see the first full sentence after
5 the two indented paragraphs there on page nine where it
6 says, "Bird stated in his second supplemental deposition,
7 Exhibit 2 hereto, that he was told January 12th, 1994 and
8 that DeMoore was told the same day." Do you see that
9 statement?

10 A. I do.

11 Q. If you need to look above that statement to see
12 what it's referring to, please do. I'll just tell you
13 for the record it's talking about the Baker trip to
14 Atlanta?

15 A. Right.

16 Q. And the information that was allegedly conveyed
17 to Steve Baker about what was to become the 363
18 invention. Is that a true statement there?

19 A. No, it's not, in fact.

20 Q. Okay.

21 A. It couldn't happen.

22 Q. That statement refers to something called second
23 supplemental declaration. We're going to ask the court
24 reporter to mark that second supplemental declaration of
25 John W. Bird as Exhibit 22.

(Deposition Exhibit 22 marked)

Q. (By Mr. Wilson) We are done with 21 there.

A. Okay.

Q. I'll show you 22. Would you examine Bird Exhibit 22, please?

A. Uh-huh.

Q. Do you recognize that document?

A. Yes, I do.

Q. Is that a declaration that you signed?

A. Yes.

Q. And in fact, you swore it to be true, did you not?

A. Yes.

Q. Would you give some close attention to paragraphs four and five of that declaration on page two?

A. Uh-huh.

Q. This is a change to your prior testimony, isn't it?

A. Yes, it is.

Q. Previously you testified that the Baker meeting occurred in July.

A. Correct.

Q. Why have you changed your testimony?

A. Because it didn't happen in July and it was in light of the recognition of the fact that I had seen the

1 receipts of Jesse Williamson's flight to Atlanta,
2 etcetera, and clearly the dates didn't fit. It couldn't
3 have possibly been July.

4 Q. And did you show -- or excuse me. Did
5 Mr. Williamson show you his entire expense records for
6 the month of June?

7 A. No.

8 Q. And did Mr. Williamson or Bill Davis or anyone
9 at Williamson Printing show you Bill Davis' expense
10 reports for June?

11 A. No.

12 MR. PINKERTON: Objection. No supporting
13 evidence for any existence of any Bill Davis expense
14 reports.

15 Q. Okay. So if there's no evidence that they
16 existed, were they shown to you if they existed? I guess
17 if they don't exist, they weren't shown to you, were
18 they, Mr. Bird?

19 MR. PINKERTON: Objection.

20 THE WITNESS: They weren't shown to me.

21 Q. (By Mr. Wilson) And how about the month of
22 July, did Mr. Williamson, that is Jesse Williamson or
23 Mr. Bill Davis, and you're going to object that the
24 question is compound, did either one of those gentlemen
25 show you his expense reports for July of 1994 in their

1 entirety?

2 A. No.

3 Q. Okay. So you really don't know whether or not
4 those gentlemen traveled to Atlanta, Georgia in July, do
5 you?

6 A. No, I don't.

7 Q. And has Mr. Baker shown you his expense reports
8 for either one of those months?

9 A. No.

10 Q. So you don't really know for a fact that he
11 didn't travel to Atlanta, Georgia in July of '94?

12 A. That's correct.

13 Q. Now, one of the prior exhibits -- one of the
14 prior exhibits in this earlier deposition that we took
15 was your first declaration in this matter, and I can show
16 that to you if you like.

17 I'll represent to you, though, that no
18 where in that declaration is there any mention of you
19 telling Howard DeMoore about Baker's meeting with Davis
20 and Williamson in Atlanta.

21 MR. PINKERTON: I object to the form of the
22 question, representations. If you want to show him a
23 document --

24 MR. WILSON: I haven't asked a question
25 yet, Mr. Pinkerton.

1 MR. PINKERTON: I was objecting to the
2 predicate. If you've got something you want to show
3 him --

4 MR. WILSON: I'll show him the document.

5 MR. PINKERTON: Thank you. I'm not going
6 to let him answer based on your representations.

7 MR. WILSON: All right. Are you going to
8 allow me to represent that this document was marked as
9 Exhibit 2 earlier or would you like to go get a copy of
10 Exhibit 2 from your records?

11 MR. PINKERTON: We can probably live with
12 that representation.

13 MR. WILSON: Okay.

14 MR. PINKERTON: Bird 2?

15 MR. WILSON: Yeah, it was originally
16 Bird 2, and I think it had the attachments, didn't it,
17 when we put it in the record last time? This is just the
18 declaration without the attachments.

19 Q. (By Mr. Wilson) Do you see anywhere in there
20 where you say you told Mr. DeMoore?

21 A. Do you want me to go through the whole document?

22 Q. If you think it's necessary to honestly answer
23 the question, then please do.

24 A. Okay.

25 Q. So since we had that long pause between the

1 question and the answer, let me repeat the question.

2 Nowhere in that declaration, which is Bird
3 Exhibit 2, do you mention that you told Howard DeMoore
4 about the 363 process that was described to Baker in
5 Atlanta, allegedly; is that correct?

6 A. That's correct.

7 Q. And how long is that declaration?

8 A. How long?

9 Q. Yes?

10 A. Pages?

11 Q. Yes.

12 A. 13.

13 Q. 13-page declaration, and do you recall that it
14 had some attachments to it? I believe there were 27
15 attachments. I'm looking at paragraph 23 and the last
16 attachment I see mentioned is Exhibit 27.

17 A. Okay.

18 Q. So that was a 13-page declaration with at least
19 27 attachments; is that correct?

20 MR. PINKERTON: Objection. Asked and
21 answered. Argumentative.

22 Q. (By Mr. Wilson) Do you recall it had 27
23 exhibits attached?

24 A. I don't recall, but I'm sure it did.

25 Q. Okay. Let me look at that sticker down there

1 while we're on that. Okay. Now, let's go back and look
2 at your second supplemental declaration, which we have
3 marked as Bird 22, right?

4 A. Right.

5 Q. And do you see in paragraph five of that
6 declaration, second supplemental --

7 A. Uh-huh.

8 Q. -- where you say, "It is incomprehensible to me
9 as PRI's product manager at that time that telling
10 DeMoore, chief executive and owner of PRI would not have
11 occurred the very same day I was told by Baker of the
12 Davis/Williamson concept of going up front with a
13 flexographic station," and then the sentence continues.

14 A. Uh-huh.

15 Q. When you said it was incomprehensible that you
16 would not have told them the same day, what did you mean
17 to indicate?

18 A. That I would have told them exactly the same
19 day that I was told of the process.

20 Q. Because it was important?

21 A. Because it was very important, yeah.

22 Q. And because he was the chief executive?

23 A. Yes, exactly.

24 Q. And so is it an important detail that he was
25 told immediately in your mind?

1 A. Yes.

2 Q. And that's, in fact, why you made the second
3 supplemental declaration, isn't it?

4 A. Yes.

5 Q. And yet it was left out of this first
6 declaration, which was signed on what date,
7 December 11th, '99; is that right?

8 A. Uh-huh.

9 Q. And this second supplemental declaration was
10 signed when?

11 A. October of 2000.

12 Q. Okay. About 10 months later after some other
13 facts in this litigation had come out; is that correct?

14 A. Correct.

15 Q. Now, let's look at the intermediate document
16 between those two; that is your supplemental declaration
17 that you made, and that was originally marked as Baker 3.
18 There is a copy of that?

19 A. Do you want to mark this? I don't know if
20 that's important.

21 Q. It was marked earlier. I'll write on it just
22 for your convenience, if you'd like, that it was Bird 2.

23 A. Okay. Thank you.

24 MR. PINKERTON: What was the supplemental
25 declaration previously marked as?

1 MR. WILSON: The supplemental declaration
2 of John W. Bird was previously marked as Bird Number 3.

3 Q. (By Mr. Wilson) Now, where in this declaration
4 do you talk about passing any information to Mr. DeMoore?
5 I see it in paragraph five, is that where you see it?

6 A. I have not got there yet.

7 MR. PINKERTON: Object to the form of the
8 question.

9 THE WITNESS: Paragraph five, yes.

10 Q. (By Mr. Wilson) Okay. And paragraph five also
11 says you might have told some other folks; is that right?

12 A. Yes, correct.

13 Q. And when we're looking at paragraph five of your
14 supplemental declaration, Bird Exhibit 3, you say, "At
15 various times I spoke with Ron Rendleman, sometimes
16 Howard DeMoore, Steve Garner, Steve Baker, and Dave
17 Douglas. Although Ron Rendleman was certainly the
18 principal person to whom I discussed Williamson's
19 specific requirements and information given to me in the
20 meetings indicated above.

21 A. Uh-huh.

22 Q. And that refers to meetings that are laid out in
23 paragraph two; is that right?

24 A. Yes.

25 Q. The first meeting in paragraph two is August

1 18th, 1994; is that correct?

2 A. Correct.

3 Q. And the last meeting is May 2nd, 1995; is that
4 correct?

5 A. Correct.

6 Q. Okay. And in paragraph three you say, "In these
7 meetings and conferences which started on or about
8 August 18th, 1994, Bill Davis and/or Jesse Williamson
9 conveyed to me details of the process they wanted
10 implemented." Is that correct?

11 A. That's what it says.

12 Q. So if we look at paragraph five, is that telling
13 me that when you told DeMoore about the 363 process, the
14 information you conveyed was based on those meetings,
15 isn't that what paragraph five says?

16 MR. PINKERTON: Object to the form of the
17 question, misconstruing the document.

18 MR. WILSON: I'm going to object to you
19 coaching the witness. If you want to object to the form
20 of my question, that's fine. If you're going to coach
21 the witness about why you think it's objectionable, then
22 I'm going to object to that. I'm not going to tolerate
23 standing objections.

24 MR. PINKERTON: Are you through? I'm
25 objecting to you pointing your finger at me for any

1 purpose. Don't ever do that.

2 MR. WILSON: John, I'm going --

3 MR. PINKERTON: And I'll object any time --
4 I'll object any time I want to to any question you have.

5 MR. WILSON: I'll tell you what about my
6 finger --

7 MR. PINKERTON: Tell me about it.

8 MR. WILSON: I'll withdraw my finger and
9 I'll apologize for it.

10 MR. PINKERTON: Thank you.

11 Q. (By Mr. Wilson) Paragraph five.

12 A. Uh-huh.

13 Q. Tell me how you parse that paragraph as to its
14 meaning about the information that you conveyed to
15 Mr. DeMoore. Do you understand my question?

16 A. No.

17 Q. Okay. How do you interpret that paragraph?
18 What did you mean when you wrote it?

19 A. What I meant when I wrote that was that any
20 meetings that I had with Jesse Williamson, Bill Davis,
21 were and if they were involved with the process, the 363
22 patent, as it's become referred to, that is the patent
23 related to the process, the Williamson process, right?

24 Q. Yes.

25 A. Just want to be clear on that.

1 Q. Yes.

2 A. Any meetings that were had relative to that
3 would have been passed on to the various people within
4 the organization, which includes Mr. DeMoore.

5 Q. So that's what --

6 A. -- and Ron Rendleman, etcetera.

7 Q. -- paragraph five is about? I'm sorry to cut
8 you off.

9 A. That's essentially what it is about, yes.

10 Q. Okay. So let's be clear, too, when we talk
11 about the 363 patent, it is the patent at issue here and
12 it's about the process. It also makes an apparatus --

13 A. It's good that you did move back and stopped
14 being so aggressive. That's a much better pose.

15 Q. You like that better?

16 A. I much prefer that.

17 Q. Okay.

18 A. It makes me very uncomfortable when you're
19 looking in my face and --

20 Q. Well, if you'll please let me know when you're
21 uncomfortable, I'll attempt to make you comfortable in
22 every way possible.

23 A. You probably should.

24 Q. Do you have enough water there?

25 A. We don't need to have that sort of sarcasm

1 either, do we?

2 Q. I'm not being sarcastic. Is there anything --

3 A. I'm not under interrogation.

4 Q. Do you need to take a break?

5 A. I believe that would be a good idea.

6 Q. Any time you need to take a break, you just tell
7 us and we'll do it, preferably after a question and
8 answer pair. Do you understand me? In other words, we
9 don't like to take a break right as a question is asked,
10 but as soon as you've given an answer you're always free
11 to get up and take a break.

12 A. Thank you for the coaching.

13 Q. And, of course, you're free to get up any time.
14 We can't force you to do anything here.

15 A. Right.

16 Q. But just as a matter of form we typically prefer
17 an answer.

18 MR. PINKERTON: Mr. Bird, are you
19 comfortable to proceed at the present time?

20 THE WITNESS: I think it might be an idea
21 just to break for a few minutes because I need to get out
22 of my system the way -- the aggressive manner in which
23 you have been talking to me and I need to get that out of
24 my head.

25 Q. (By Mr. Wilson) Can we just have the last .

1 question read back just so we know what it is, and then
2 you can take a break and come back and answer it?

3 A. Yes.

4 THE WITNESS: And if you'll stop shaking
5 your head and smiling and laughing and --

6 MR. DE MOORE: When you're lying what else
7 can I do?

8 MR. PINKERTON: Object. I'm objecting to
9 this on the record. Certainly we can have an orderly
10 procedure here.

11 Counsel, I would request that those
12 comments be stricken from the record. Would you agree
13 with that?

14 MR. WILSON: What comments are those?

15 MR. PINKERTON: Well, I don't know if the
16 reporter picked up the statements of Mr. DeMoore or not,
17 but they need to be --

18 THE WITNESS: Mr. DeMoore just --

19 MR. DE MOORE: I believe I should have the
20 right to nod my head yes or no or shake my head.

21 THE WITNESS: He just called me a liar.

22 MR. WILSON: We'll strike that whole
23 exchange from, "Will the court reporter read back the
24 question." Is that okay with you?

25 MR. PINKERTON: That's fine.

1 Q. (By Mr. Wilson) Are you okay with that,
2 Mr. Bird?

3 A. I'd like an apology for calling me a liar.

4 Q. Why don't we accomplish that on the break.

5 MR. PINKERTON: We'll take a -- let's take
6 a break.

7 THE WITNESS: We'll take a break.

8 MR. WILSON: He's -- that's going to be
9 stricken from the record and we'll accomplish apologies.

10 THE WITNESS: I'd like an apology.

11 MR. PINKERTON: Let's go ahead and take our
12 break.

13 VIDEOGRAPHER: Off the record, 9:52.

14 (Recess taken)

15 VIDEOGRAPHER: We're on the record at
16 10:07.

17 Q. (By Mr. Wilson) If you don't mind, Mr. Bird,
18 I'm going to change the topic for a moment here and we'll
19 get back to these declarations. I wanted to ask you if
20 you had any records of Susan Siem's?

21 A. No.

22 Q. You don't have anything called weekly schedules?

23 A. No.

24 Q. Okay. And do you have any records in your
25 possession or control that would indicate anything about

1 Susan Siem's travels in June and July of '94?

2 A. No.

3 Q. Have you turned anything like that over to
4 Mr. Pinkerton or Mr. Falk?

5 A. No.

6 Q. Do you have any idea whether Susan Siem was with
7 Mr. Baker at any point on the Atlanta trip that we've
8 been talking about?

9 A. Yes.

10 Q. And what is your belief on that?

11 A. To the best of my recollection Susan met with
12 both -- all three individuals that went on that visit,
13 which included Steve Baker, Jesse Williamson, and Bill
14 Davis, and she accompanied them to the customer sites,
15 and I believe that was -- that was her duty at the time.

16 Q. Do you know if she accompanied them to this
17 dinner?

18 A. I'm not sure about that. I'm not sure about the
19 dinner.

20 Q. And what is the basis of --

21 A. I actually don't think so, but --

22 Q. You don't believe so?

23 A. I don't believe so..

24 Q. What is the basis of your belief as to anything
25 you know about Susan Siem that weekend or those days in

1 Atlanta?

2 A. I don't --

3 Q. Well, you say you believe she took them to the
4 customer sites?

5 A. Right.

6 Q. You know that how?

7 A. Just through recollection. I recall even the
8 car that they drove just because it was one of those
9 situations that stands in your memory.

10 Q. How would you know the car that they drove?

11 A. Just because it was explained to me that it
12 looked somewhat distinguished with Jesse and Bill sitting
13 in the front of a very small car.

14 Q. Who explained that to you?

15 A. Susan Siem.

16 Q. And when did she explain that to you?

17 A. That was directly after the visit.

18 Q. So you're talking about the car that Mr. Davis
19 and Williamson rented?

20 A. Rented, yes.

21 Q. I think we've had other testimony that it was a
22 Chrysler LeBaron convertible?

23 A. Yes, that's what I believe it was, too.

24 Q. That is an image.

25 A. Yes.

1 Q. We had a deposition with Mr. Davis the other
2 day, actually, where he told us about the Chrysler
3 LeBaron.

4 A. It stuck with everybody, I believe.

5 Q. He also said, and Mr. Pinkerton can correct me
6 if I'm misrepresenting the record, that Williamson or
7 Mr. Davis, somebody over there at the company gave to
8 their patent attorney some computer drawings that came
9 from Printing Research, might have been just one drawing,
10 of the Ferris wheel mechanism. Do you know the mechanism
11 I'm talking about?

12 A. Yes, I do.

13 Q. That's at issue here. Do you have any
14 recollection as to that? Did -- were drawings given to
15 Williamson for use in their patent that you know of?

16 A. Not that I'm aware of for use in their patent,
17 no.

18 Q. You qualify your answer, and why is that?

19 A. Well, because I do believe that drawings were
20 used, but they weren't provided for that purpose.

21 Q. Okay. Do you know that drawings were provided
22 to Williamson?

23 A. Computer drawings were provided to Williamson.

24 Q. And when was that, to the best of your
25 recollection?

1 A. They would have been provided, had to be late
2 fall, early '95, somewhere in there.

3 Q. Late fall, you mean late fall of '94?

4 A. Of '94 to early '95, somewhere in there, I would
5 assume.

6 Q. And did you provide any drawings like that to
7 Williamson?

8 A. Yes, I did.

9 Q. Who did you provide them to?

10 A. They would have been provided in proposal form,
11 and they would have been provided to Jesse Williamson.

12 Q. When you say in proposal form, do you mean with
13 a letter proposing a sale or?

14 A. They would have been an attachment to a
15 proposal, yes.

16 Q. Okay. And were those drawings, they were
17 computer drawings; is that right?

18 A. Yes.

19 Q. And were they what is called CAD drawings?

20 A. No.

21 Q. What in your mind is the difference between CAD
22 drawings and computer drawings?

23 A. A CAD drawing is a detailed engineering drawing.

24 Q. Okay.

25 A. Where what we refer to as a computer drawing is

1 more of a concept drawing, which is a refined sketch, if
2 you like, as opposed to a real true engineering drawing.

3 Q. Okay. So one is sort of a drafting document and
4 the other is more of a -- just a pictorial
5 representation; is that fair?

6 A. Yes.

7 Q. They both come off computers, though?

8 A. Yes, very different computer software.

9 Q. Okay.

10 (Discussion off the record)

11 Q. (By Mr. Wilson) We have just given you a check
12 that was for your cost, right?

13 A. Right.

14 Q. As an agreement, each --

15 MR. PINKERTON: One-half.

16 MR. WILSON: -- each side paid one-half.

17 MR. HARRIS: No, I don't believe the check
18 was for one-half. We paid one quarter already.

19 MR. PINKERTON: No, you have not, Bill.

20 MR. HARRIS: What did you do, reject the
21 one-quarter check?

22 MR. PINKERTON: There was not a check.

23 MR. HARRIS: What?

24 MR. PINKERTON: That was the full half that
25 I did, that amount. I never got a check for the quarter.

1 MR. HARRIS: Somebody made one out for
2 that. No telling what happens at our shop.

3 MR. PINKERTON: Well, you mean -- oh, at
4 your shop.

5 MR. HARRIS: No problem if it didn't get
6 over here, but --

7 MR. PINKERTON: And I didn't get it, and if
8 I do --

9 MR. HARRIS: Destroy it.

10 MR. PINKERTON: If I do, I'll send it back.

11 MR. HARRIS: Or we'll just void it.

12 MR. PINKERTON: Thanks.

13 THE WITNESS: Make sure you don't void this
14 one.

15 MR. HARRIS: No, I don't think so.

16 Q. (By Mr. Wilson) Let me just ask you some
17 general questions, Mr. Bird, very quickly for the record.
18 Have you found your Day-Timers for May and July of 1994?

19 A. If they're the ones that are missing. I know
20 July was missing, and I -- no, I haven't.

21 Q. Okay.

22 A. And I don't think that I have May. I noticed
23 that that was missing from the copies, so --

24 Q. Okay. I can show you --

25 A. I don't really understand why. They weren't

1 missing, but -- they weren't missing.

2 Q. Okay. If you'd like we can show you those and
3 you can verify that May and July are missing. Those are
4 what you sent to me, and you may recall I sent you a
5 letter inquiring after those.

6 A. Yes, you did, correct.

7 Q. Did you take a trip to Italy in June of 1994?

8 A. Yes, I did.

9 Q. When was that?

10 A. That was, I believe --

11 Q. Do you want to refer to your June --

12 A. Yes, that would be really nice.

13 Q. Okay.

14 A. It looks like I left for Italy on June 4, which
15 was a Saturday, and returned on June 12.

16 Q. Okay. Is that --

17 A. Either that or I returned on the Saturday, but I
18 think I was there through Saturday, so I returned on the
19 12th.

20 Q. Right, you are comparing the -- your entries on
21 the 11th to the -- to what?

22 A. Yes, and if you look at the calendar at the
23 back --

24 Q. Right.

25 A. I show that the show had ended on the Saturday,

1 but it's much more likely that I would have returned on
2 the 12th.

3 Q. So what is -- there's an annotation there,
4 right, GEC94?

5 A. Right.

6 Q. For those dates, June 4th through the 11th,
7 possibly the 12th?

8 A. Correct.

9 Q. What does that acronym stand for?

10 A. It's -- I really don't know. It's Graphic --
11 it's an exhibition that occurs once every -- used to
12 occur once every four years in Italy.

13 Q. I had assumed it was Graphic Expo Chicago.

14 A. No, no.

15 Q. That's not the case?

16 A. No, Milan.

17 Q. And, in fact, let's just -- I did copy that back
18 page and it might just be easier to put all of these
19 pages in, and I don't know what their relevance is, but
20 these are pages taken from your various Daytimers.

21 A. Okay.

22 Q. And the first page there is that summary page on
23 June that you're looking at. Let's go ahead and mark
24 those as -- what are we on, 23?

25 (Deposition Exhibit 23 marked)

1 Q. (By Mr. Wilson) If you need to compare any of
2 those against the specific books to see if they're right,
3 we can do that.

4 A. I'm sure they are.

5 Q. But let's just look at the first page here.
6 This is a copy of the summary from your June 1994
7 Daytimer booklet.

8 A. Right.

9 Q. And so we see that you were gone from the 4th
10 through the 11th, that was the Italy trip you just
11 testified about?

12 A. Yes.

13 Q. And what is this entry from the 16th through the
14 18th, Southwestern Graphics?

15 A. That's a local Texas show, I believe, I'm not
16 sure, but it -- I think it was in Dallas in '94, but it
17 could just as easily have been in San Antonio or Houston,
18 but I don't recall.

19 Q. It's typically in Texas?

20 A. Yes, it's only in Texas.

21 Q. Okay. And then what is the entry from the 20th
22 through the 25th?

23 A. That's a show called Corrugated, which is noted
24 by the year that it's in, it's Corrugated '94, and that
25 was a show in Paris, France.

1 Q. Is it fair to say you were a traveling man in
2 June?

3 A. It's fair to say that I was a traveling man
4 while I was with Printing Research.

5 Q. So you went to all three of those expositions
6 there?

7 A. Yes.

8 Q. And then there's a European sales conference on
9 the 27th and the 28th?

10 A. Correct.

11 Q. And you attended that as well?

12 A. Yes.

13 Q. Where was that?

14 A. That was in England, so that I traveled back
15 from Paris through England on my way back to Texas.

16 Q. Now, I know you don't have your July calendar.
17 We might have one there in that booklet, though, mighten
18 we, the July one that's in front of you?

19 A. Yes.

20 Q. And I didn't make a copy of that page, maybe we
21 should, but just for the record does July look anything
22 like --

23 A. Just one entry.

24 Q. -- June is one entry?

25 A. Yes.

1 Q. And it says Prestige --

2 A. Prestige Heritage office.

3 Q. What does that entry mean?

4 A. I'm going to meet with Prestige and Heritage,
5 they're a local company.

6 Q. Okay.

7 MR. PINKERTON: What date is that entry?

8 THE WITNESS: Friday, the 1st of July.

9 Q. (By Mr. Wilson) So to your recollection was
10 July anywhere near as busy as June?

11 A. No, no.

12 Q. Would you say that June was a memorable month?

13 A. Yes.

14 MR. PINKERTON: Object to the form.

15 Q. (By Mr. Wilson) Why would you say that?

16 A. Because there was a lot happening.

17 Q. I think you might have prior -- previously
18 testified to this, but you have been in the printing
19 business for, what, about 35 years?

20 A. 40.

21 Q. 40 now.

22 All right. Based on your experience and
23 observations would you say that Jesse Williamson
24 possesses ordinary skill in the art of printing?

25 A. I would say he has extraordinary, but --

1 Q. So at least ordinary skill; is that fair?

2 A. At least ordinary.

3 Q. And you think extraordinary?

4 A. Yes, I do.

5 Q. In fact, one of your declarations you say he's a
6 genius, do you recall that?

7 A. I don't know if I said genius, but maybe I said
8 visionary.

9 Q. A visionary?

10 A. Yes.

11 Q. And I think you referred maybe to the invention
12 as an act of genius or something to that effect, do you
13 recall?

14 MR. PINKERTON: Object to the form.

15 THE WITNESS: Maybe.

16 Q. (By Mr. Wilson) Anyway, you think he's pretty
17 good, don't you?

18 A. I think he's very good.

19 Q. Okay. And based also on your experience and
20 observations what would you say about Bill Davis' skill
21 in the art of printing?

22 A. I think he's very good.

23 Q. He has at least ordinary skill in the art of
24 printing?

25 A. He's got at least ordinary skill, yes.

1 Q. Would you say he has extraordinary skill?

2 A. I wouldn't have said extraordinary, no.

3 Q. Okay. What would you say, without me putting
4 words in your mouth?

5 A. I'd say he is more than competent. He has a --
6 he has very good knowledge of the industry, very good
7 understanding.

8 Q. And what about of printing presses?

9 A. Oh, yes.

10 Q. Good knowledge of that?

11 A. Yes, very much so.

12 Q. Machinery, good knowledge about that?

13 A. Yes, very much so.

14 Q. Going back to these trips that you took in June
15 that we've got shown there on Bird 23, who accompanied
16 you on those trips?

17 A. In order, GEC was Steve Garner; Southwestern
18 Graphics, that would have been a host of people, local
19 people, would have been Steve Baker, would have been
20 Howard DeMoore, Steve Garner. Those are the people that
21 come immediately to mind. Steve Baker because he's the
22 local -- was the local representative.

23 Q. To that company?

24 A. To our company and Southwestern Graphics was a
25 local show, a Texas show.

1 Q. I see.

2 A. So those four clearly would have been --

3 Q. I wrote down three. Baker, DeMoore, Garner?

4 A. And myself.

5 Q. Oh. And --

6 A. Corrugated '94 I was on my own.

7 Q. Okay.

8 A. I met up with everybody else at -- in the
9 England European conference.

10 Q. Okay. And by everybody else, you mean?

11 A. Ed Shafler, Steve Garner, and European
12 representation of Printing Research.

13 Q. Who would that be, do you recall?

14 A. At that time the gentleman that organized it was
15 a gentleman called Ray Hermans. There was the Dutch
16 representative whose name escapes me; French, whose name
17 escapes me; Italian, each of those names escapes me,
18 but --

19 Q. How do you spell --

20 A. The English names are much easier to remember.

21 Q. Yeah. Ray Holmanson, is that what you said?

22 A. Hermans, H-e-r-m-a-n-s.

23 Q. Okay. Your accent is a little different than
24 mine.

25 Did you ever discuss the 363 with Jerry

1 Williamson?

2 A. I don't recall.

3 Q. You don't recall Jerry Williamson being in any
4 of these meetings that you listed in your supplemental
5 declaration?

6 A. Which one are you referring to, Steve?

7 Q. That's Bird Exhibit 3 and it's paragraph two on
8 page one to two of that exhibit.

9 A. That's page two, did you say.

10 Q. Yeah, one and two, top of page two, bottom of
11 page one, they're all listed there.

12 A. Oh, okay. Jerry may have been in some of those
13 meetings. I don't honestly recall.

14 Q. Well, the first you heard about them patenting,
15 can I say that?

16 A. Uh-huh.

17 Q. The first you heard about them wanting to issue
18 a patent on this process, I believe you've either
19 declared somewhere here or previously testified that it
20 was January of 1995; is that right?

21 A. Yeah, I believe so.

22 Q. And but you think Mr. Williamson might have been
23 in some of these meetings as early as August?

24 A. Which Mr. --

25 Q. I'm sorry, Jerry Williamson?

1 A. I'm not sure. I can't recall. I know that he
2 was at one or two of the meetings, but which meetings --

3 Q. Might have been early in the game, might have
4 been late in the game?

5 A. Might have been early, might have been late in
6 the game, absolutely.

7 Q. Okay. I would like to look, if we may, at your
8 most recent declaration, that's the second supplemental
9 which we've marked as Bird 22.

10 A. Okay.

11 Q. You see in paragraph five on page two of your
12 second supplemental declaration where you've crossed some
13 things out?

14 A. Right.

15 Q. And the effect of crossing those out is that you
16 really wind up saying that you told Howard DeMoore on
17 June 15th?

18 A. Correct.

19 Q. And originally you had said June 15th or
20 June 16th; is that fair?

21 A. Yes, that's fair.

22 Q. Why did you make that change?

23 A. Well, because on reflection and looking at my
24 Daytimers, it was clear that it was -- it had to be, it
25 was the 15th relative to the timing and Southwestern

1 Graphics, etcetera.

2 Q. Okay.

3 A. That had to be the time.

4 Q. Okay. Well, maybe we need to make another
5 correction, I don't know, but to me that doesn't fit with
6 what you say in paragraph four. And let me put a
7 question to you.

8 Paragraph four you say, "Baker, I recall,
9 returned on the following Wednesday, the 15th, possibly
10 Tuesday the 14th. Baker came into my office, I recall it
11 was in the morning, the day following his return."

12 A. Well, that would mean a return into the company.

13 Q. The day following his return into the company?

14 A. Yeah.

15 Q. Okay. So -- so, I mean, if he came back on the
16 15th and you saw him on the 16th, wouldn't that be the
17 day following; is that what you meant?

18 A. No, I don't think that's what I meant.

19 Q. Okay. Maybe I'm reading it too close. Can you
20 tell me what you meant?

21 A. I think I mean that we -- he came into the
22 office on the 15th.

23 Q. Okay. So you think he might have come in either
24 one of those days?

25 A. I think that he would have come in on the 15th.

1 Q. So if you had to do this again would you strike
2 the testimony about the 14th there, the statement?

3 MR. PINKERTON: Object to form.

4 Q. (By Mr. Wilson) Well, I mean, did he come into
5 your office the same day he came back or the next day?

6 A. I'm not sure. All I can tell you is that he
7 would have come into the office on the day that -- on the
8 day that he returned, he would not probably have come
9 into the office.

10 He would have come in, I think on -- I
11 think, it seems to me we are debating what is is, but it
12 was certainly the day before or would have had to have
13 been the day before the show, because he would have had
14 to be in the office for the prepping of -- for the show,
15 since he hadn't been in from the weekend and I hadn't
16 been around from the week previous.

17 Q. And how extensive is the preparation for that
18 show that you're referring to? That's the --

19 A. Not vast, but nonetheless he would want to know
20 what we were doing and what -- and how we were going to
21 accomplish that and who was going to be there, etcetera.

22 Q. You are referring to the Southwestern Graphics
23 show?

24 A. Yes, and I of course wanted to be appraised of
25 the situation with Williamson, how had the -- how had the

1 demonstration gone.

2 Q. Is it fair to say there was a lot going on?

3 A. It's fair to say we had a lot going on, yes.

4 Q. Do you recall a meeting in July of 1994 with
5 Dennis Griggs about a patent of any kind? Do you have
6 any --

7 A. We had meetings. We had meetings with Dennis
8 Griggs, yes.

9 Q. Just in general, not even referring specifically
10 necessarily to July of '94, but about how often did
11 representatives of the company meet with Mr. Griggs in
12 1994?

13 A. Fairly often.

14 Q. Fairly -- was it a regular event?

15 A. It seemed that way, yes.

16 Q. And did you attend any of those meetings?

17 A. I attended some of those meetings, yes.

18 Q. In fact, you appear on some of the patents that
19 he helped issue?

20 A. That's true.

21 Q. And at those meetings did you have input on
22 those patents?

23 A. Yes.

24 Q. I mean, you spoke?

25 A. Yes.

1 Q. You engaged in dialogue?

2 A. Yes.

3 Q. You didn't just sit there?

4 A. No.

5 Q. Okay. Do you recall Howard DeMoore asking Ron
6 Rendleman in one of these meetings with Mr. Griggs at any
7 time in the summer of '94 if Ron could put a flexo unit
8 up on the first printing station?

9 A. Can you say that again?

10 Q. Do you ever recall Howard DeMoore turning to Ron
11 Rendleman in a meeting with Dennis Griggs and obviously
12 yourself, since I'm asking if you recall --

13 A. Yes, sure.

14 Q. -- and asking him if he could find a way to put
15 a flexographic unit upstream in the press, either on the
16 first printing press or mounted so it would go
17 interstation?

18 A. I don't recall, but I'm not going to deny it
19 could have happened.

20 Q. Okay. I'm curious about a statement that is
21 made in your, what I'm calling your first declaration.

22 A. Okay.

23 Q. That's Exhibit Number 2. I believe it's right
24 there. And if you'll look at paragraph 17, on page 9,
25 you see it's -- I guess it's about the third from the end

1 there, third from the last sentence. "That was my first
2 inkling of the potential and subsequent idea to install
3 such device upstream on a litho press." Do you know what
4 you meant by that?

5 A. I think I'm referring to the potential in the
6 marketplace for the product.

7 Q. What do you mean by the phrase "first inkling"?

8 A. Well, it was -- it gave me the first inkling as
9 how big that marketplace would be.

10 Q. Okay. But I mean, what does the phrase
11 literally mean, first inkling, is that like your first
12 idea, the first time it sort of tickled your brain?

13 A. The first time that I recognized the size of the
14 marketplace.

15 Q. Okay.

16 A. I think is what I'm referring to.

17 Q. But when you use the word inkling, you're
18 talking about you're getting a glimmer of just the
19 possibility is there, right?

20 MR. PINKERTON: Object to the form as
21 argumentative. Asked and answered.

22 THE WITNESS: Not really.

23 Q. (By Mr. Wilson) Okay. So you mean you grasped
24 the concept whole at that time?

25 A. I grasped the potential of the marketplace.

1 Q. Okay. And why do you say the subsequent idea to
2 install such device upstream on a lithographic -- or a
3 litho press? Why subsequent idea?

4 A. I don't know.

5 Q. Doesn't subsequent mean following?

6 A. It does mean following.

7 Q. And typically means following in time or in
8 place, right?

9 A. It does.

10 Q. Here it appears to mean following in time,
11 doesn't it?

12 A. It does.

13 Q. See, I'm confused about that sentence because it
14 looks to me like the idea to install a device upstream on
15 a litho press occurred after these tests that are talked
16 about in paragraph 17.

17 MR. PINKERTON: Object to the form.

18 Q. (By Mr. Wilson) Can you help me with my
19 confusion?

20 A. I can say that I guess that it was not
21 intentionally, but a misleading statement on my part, and
22 I can see how easily that would be misleading.

23 Q. What is the meaning of that last sentence in
24 paragraph 17? "I never told anyone at WPC about this
25 process."

1 A. I guess I'm saying that we never gave -- I never
2 gave them the idea for the process.

3 Q. But you're talking about tests, are you not, in
4 this paragraph in, gosh, I think it's March of 1995?

5 A. Yes, it becomes very confusing. The paragraph
6 is confusing.

7 Q. Well, you know, you make an explanation of this
8 in your supplemental declaration. Let's look at your
9 explanation. That's Bird Exhibit 3, and that is in
10 paragraph eight. Would you read that for the jury,
11 please?

12 A. My conference with Lapamarta, my first
13 declaration 17 and my inkling occurred well after I
14 learned of the new Williamson process. By that time I
15 had already seen the results of the Brian Lester medieval
16 poster, which occurred in March '95.

17 Q. Can you help me with that? How does that
18 explain paragraph 17?

19 A. I think what I'm referring to is the relevance
20 of the machinery, the actual coater, the equipment and
21 it's relevance to being able to achieve a potential in
22 the marketplace again, I think.

23 Q. Is that different or the same as what you were
24 telling me earlier about your inkling?

25 A. Yes, I think so. I think it's the same thing.

1 Q. It's the same thing?

2 A. I think it's the same thing.

3 Q. Okay. So what you're -- you're clarifying in
4 paragraph eight there just what you said to me earlier;
5 is that right?

6 A. I think so, yeah.

7 Q. That you're --

8 A. That's how I read it.

9 Q. That you really first grasped the potential --

10 A. In the marketplace --

11 Q. -- in March of 1995?

12 A. Right.

13 Q. Well, in this same declaration at Bird
14 Exhibit 3, your supplemental declaration, in paragraph
15 two you list out all of these meetings that you had.

16 A. Right.

17 Q. And it looks like there's 16 meetings there
18 going through February that occur before March?

19 A. Uh-huh.

20 Q. And I believe your testimony or your statement
21 here is that those meetings had to do with this process
22 to one degree or another?

23 A. Not always, no.

24 Q. So some of these meetings might have had nothing
25 to do with the process, the 363?

1 A. It's unlikely, but there were meetings that had
2 nothing to do with 363 at all, I'm sure, within there.

3 Q. Within this group of meetings here?

4 A. I'm assuming so, yes.

5 Q. And when we talk about the 363 you do -- do you
6 understand we are talking about a process?

7 A. Yes.

8 Q. And there are apparatus claims in the 363, do
9 you understand that?

10 A. I didn't know there were apparatus claims in
11 363.

12 Q. Okay. When you had discussions with Williamson
13 or Williamson personnel, you understand that when I say
14 Williamson --

15 A. Uh-huh.

16 Q. -- about the 363, wasn't it your understanding
17 that the purpose of those meetings was for Printing
18 Research to create an apparatus to perform this process?

19 A. No, not all of those meetings were of that type,
20 no.

21 Q. Well, what were they about, then?

22 A. Well, we were negotiating, we were talking about
23 a contract and the possibility to sell them some
24 machinery. We were talking about them purchasing new
25 machines and us going in there to sell them new machines

1 at the same time.

2 Q. Heaters and all kinds of machinery, right?

3 A. Yeah.

4 Q. In fact, you had a big sale to them in October,
5 didn't you?

6 A. Correct.

7 Q. They signed -- I think they signed on
8 October 1st --

9 A. Correct.

10 Q. -- of 1994?

11 A. I say correct, I mean, yes, I'm sure you're
12 right.

13 Q. Okay. And but I mean that fits with your
14 general memory, about that time, October of '94 you made
15 a big sale?

16 A. Yes.

17 Q. And you knew they had more presses coming in,
18 right?

19 A. They hadn't -- at that time, of course, we were
20 talking about them purchasing those machines.

21 Q. Right.

22 A. And what they were purchasing and how we would
23 be able to suit their needs in those machines, yes.

24 Q. And when do you understand that they first
25 agreed to buy those new Heidelberg presses?

1 A. Some time in that period --

2 Q. Okay.

3 A. -- in these meetings.

4 Q. I'll represent to you that you've said in one of
5 these statements that you knew as early as July of '94?

6 A. Okay.

7 Q. Okay. And was it a foregone conclusion that
8 Printing Research would sell heaters to Williamson?

9 A. When you say was it a foregone conclusion?

10 Q. Was it guaranteed?

11 A. No.

12 Q. There is other competitors in the marketplace?

13 A. Yes, exactly.

14 Q. And you were a salesman for Printing Research at
15 the time?

16 A. I was a product manager for Printing Research.

17 Q. Okay. But I mean, certainly you were interested
18 in making sales?

19 A. Yes, I was.

20 Q. And when they get new presses, any printing
21 company, is it typical that they want to get them up and
22 running as soon as possible?

23 A. Very typical.

24 Q. Okay. So they would want to have dryers on
25 those things, wouldn't they?

1 A. Typically they would, yes.

2 Q. So if you knew they had a new press coming soon,
3 then you had to make your sale now, in effect, right?

4 A. Well, as soon as we knew they were purchasing,
5 and remember we had been talking to them for some time,
6 yes.

7 Q. Sure. But there is a good chance that some of
8 these early meetings that you talk about here, you know
9 the first four there, August through October, could have
10 been about your dryers?

11 A. It could have.

12 Q. Isn't that fair?

13 A. It could have.

14 Q. Okay.

15 A. Could have.

16 Q. In fact, it's likely that a substantial portion
17 of those meetings, even if other things were talked
18 about, were about the dryers; isn't that fair?

19 MR. PINKERTON: Object to the form.

20 THE WITNESS: No.

21 Q. (By Mr. Wilson) No?

22 A. No, I mean it's not fair. I mean, the -- no,
23 it's not fair.

24 Q. Well, how do you make a sale without having some
25 meetings?

1 A. We had made the sales -- if you are telling me
2 that the sale was made, and I don't have a recollection
3 of the dates, but if we made the sale for their first
4 machine earlier in the year, then I would correct my
5 statement saying that it wasn't foregone, but we would
6 have made all of those representations much earlier.

7 Because now I think about it, the first
8 machine that came in was in the November, December
9 of '94, I believe.

10 Q. Well, Mr. Davis represented to us the other day
11 that the machine was in by October.

12 A. Okay. So if it was in October we clearly had to
13 have started the meetings to sell that machinery long
14 before that.

15 Q. Okay.

16 A. Probably the early part of that year.

17 Q. Early part of '94?

18 A. Yes, the representations to supply the dryers.
19 They couldn't have had a machine delivered -- we actually
20 had a competitor's equipment taken off those machines to
21 have ours put on, so clearly there was a lot of
22 discussion long before these meetings.

23 Q. Before they even decided to buy them from
24 Heidelberg?

25 MR. PINKERTON: Object to form.

1 THE WITNESS: No, no, no. Not before --

2 Q. (By Mr. Wilson) Well, what do you mean long
3 before? When were these other discussions?

4 A. Before the dates of these meetings.

5 Q. Okay. So you don't mean the first of the year,
6 though, do you?

7 A. It could have been.

8 Q. Well, if they didn't know they were going to buy
9 them from Heidelberg, now they were talking about buying
10 something, right?

11 A. We knew they were purchasing, I believe, back in
12 '93, that they were in the market to replace their
13 machinery. I believe it was '93.

14 Q. And did you know they had committed to buying
15 Heidelberg presses in 1993?

16 A. Not in '93, no, but early '94 we did.

17 Q. You learned in early 1994 that Williamson
18 Printing Corporation --

19 A. Were going to buy seven -- I believe it was
20 seven machines.

21 Q. When in early 1994?

22 A. I would have to say the first quarter, maybe the
23 second quarter, but certainly the first quarter.

24 Q. And by quarters you are referring to three-month
25 periods?

1 A. Right.

2 Q. First quarter would be January, February, March?

3 A. Somewhere in there.

4 Q. Second quarter would be --

5 A. Yeah.

6 Q. -- April, May, June?

7 A. Uh-huh.

8 Q. Well, which is it?

9 A. I don't know.

10 MR. PINKERTON: Object to the form.

11 THE WITNESS: I don't recall. I'm sure if
12 we looked through my Daytimers we might see.

13 Q. (By Mr. Wilson) Let's do that on a break.

14 I want to go back briefly to your inkling
15 referred to in paragraph 17 of your first declaration at
16 Exhibit 2 and again in paragraph eight of your
17 supplemental declaration in Exhibit 3, and I want to
18 compare that to paragraph five of your second
19 supplemental declaration.

20 MR. PINKERTON: Which is?

21 MR. WILSON: Which is Exhibit 22.

22 MR. PINKERTON: Object to the form of the
23 question.

24 MR. WILSON: There has been no question
25 asked.

1 MR. PINKERTON: Object to the predicate
2 that you're laying. It's --

3 THE WITNESS: Which one are we talking
4 about?

5 Q. (By Mr. Wilson) I'm looking at paragraph five.

6 A. Of?

7 Q. Bird Exhibit 2, which is your second
8 supplemental declaration. This is the paragraph where
9 you say it was incomprehensible --

10 A. Uh-huh.

11 Q. -- that you wouldn't have told DeMoore the very
12 same day that you were told by Baker.

13 A. Right.

14 Q. If you didn't have an inkling until March of
15 1995 of how important the process could be as a market --

16 A. That's not what --

17 Q. -- why is it incomprehensible that you wouldn't
18 have told DeMoore the very same day in June of 1994, 10
19 months before you had any inkling of how important it
20 was?

21 MR. PINKERTON: Object to the form of the
22 question and argumentative.

23 THE WITNESS: It's totally incomprehensible
24 that having learned of a project that -- and a process
25 with the importance that had been set to it by Williamson

1 Printing that we would not -- I would not have to and
2 need to go to the CEO of the corporation to get
3 permission to chase down that project. No matter how big
4 or how small that market was, especially since we were
5 entangled with Williamson Printing in a very big
6 contractual agreement to purchase a whole slew of drying
7 equipment from us at that time. So yes, it's totally
8 incomprehensible.

9 Q. What contract is that?

10 A. Well, the purchase of the machine from us,
11 purchase of drying equipment from us.

12 Q. This is the purchase that was agreed to in
13 October of --

14 A. Whenever --

15 Q. -- 1994?

16 A. Could be, yes.

17 Q. So you mean it's incomprehensible because you
18 were in negotiations?

19 A. Absolutely, right. I mean, it was
20 incomprehensible on two counts. One is that I, John
21 Bird, am not going to be able to get the project carried
22 out on my own authority. I have to go to the CEO of the
23 corporation to get permission to start working on the
24 project and to make the next moves that would be
25 necessary to do that.

1 Q. Well, you had a conference that you were
2 attending that same week, right, the --

3 A. Southwestern Graphics.

4 Q. -- Southwestern Graphics?

5 A. Yes.

6 Q. It's not comprehensible to you that you might
7 have waited until that conference to tell Mr. DeMoore?

8 A. No, no, not at all because -- well, for several
9 reasons. Number one is that I would have been with
10 Mr. DeMoore during Southwestern Graphics in any case, so
11 that's very clear that we would have had a lot of time to
12 discuss. Southwestern Graphics is very slow traffic and
13 you have a lot of time on your hands, so even if, and I
14 don't believe that's the case, but even if I had not
15 discussed it with him at the corporation I know it would
16 have been discussed at Southwestern Graphics.

17 The truth is that I do honestly believe
18 that it was discussed the same day that I got the
19 information from Steve Baker. I'm convinced that Steve
20 Baker was in the room when it was discussed.

21 Q. Does the 363 process require the printer or
22 practitioner the method taught to apply a sealer over the
23 flexographic printing before printing lithographically?

24 MR. PINKERTON: Object to the form of the
25 question. Lack of knowledge. Lack of understanding.

1 THE WITNESS: I don't know.

2 Q. (By Mr. Wilson) You were in 20 plus meetings
3 about this process --

4 MR. PINKERTON: Object to the form.

5 Q. (By Mr. Wilson) -- were you not?

6 A. Probably.

7 Q. And you realized its potential in March of 1995?

8 A. That is not what I said, but -- okay.

9 Q. Well, I'm sorry?

10 A. You're framing my answer in a totally incorrect
11 light.

12 Q. I'm just wondering what you --

13 A. I talked about market potential.

14 Q. Okay.

15 A. Market potential. I didn't talk about the
16 inkling of the power of the product. I was talking about
17 the potential in the marketplace, very different.

18 Q. Does the process require a sealer?

19 A. I can't recall.

20 Q. Does it require interstation drying?

21 A. Of course.

22 Q. Would you be surprised to hear that it requires
23 a sealer?

24 MR. PINKERTON: Object to the form of the
25 question. Asking for speculation about being surprised.

1 MR. WILSON: I'm asking for the experience
2 of a man who has been 40 years in the business --

3 MR. PINKERTON: If you want to ask based on
4 his --

5 MR. WILSON: -- and has some expertise in
6 flexography.

7 MR. PINKERTON: If you want to ask it in
8 that manner, but you're asking him to just speculate.

9 MR. HARRIS: Well, he can object.

10 Q. (By Mr. Wilson) Would it surprise you?

11 MR. PINKERTON: Object to the form of the
12 question.

13 THE WITNESS: No, it wouldn't surprise me,
14 no.

15 Q. (By Mr. Wilson) If someone were to order a
16 cartridge coater system from Printing Research in 1994,
17 what would they have gotten?

18 A. I have no idea.

19 Q. Did you sell coaters in just a form where they
20 could be installed without a rack back?

21 A. We did.

22 Q. Might that be called a cartridge coater?

23 A. We didn't call it that, but if that's what
24 you're referring to.

25 Q. What did you call it?

1 A. We called it an easy coater.

2 Q. Just straight easy coater?

3 A. Yes.

4 MR. PINKERTON: Can we take a break?

5 MR. WILSON: Sure, you want to take a quick
6 one, about 10 minutes.

7 VIDEOGRAPHER: We're off the record at
8 10:59.

9 (Recess taken)

10 VIDEOGRAPHER: We're on the record at
11 11:16.

12 Q. (By Mr. Wilson) When you told Howard DeMoore
13 about what we have been calling the 363 process around
14 June, I think you said 15th?

15 A. Yes.

16 Q. What did Howard say about it?

17 A. I can't recall his exact words, but surely he
18 was impressed with what we were looking at and the
19 process overall.

20 Q. You say surely, is that your recollection or are
21 you --

22 A. That's my recollection.

23 Q. -- deducing that?

24 A. No, that's my recollection.

25 Q. And you testified a moment ago that Baker was at

1 this meeting. What did Baker say?

2 A. Well, Baker made Howard aware. If he was there,
3 and I believe he was, it just doesn't make sense just
4 because of how the logistics of the corporation worked,
5 etcetera, and how we were that it makes infinite sense to
6 me that Baker would have been present at that meeting,
7 but it would clearly be explained to Howard how and what
8 they were doing and what the 363 process was.

9 Q. Where was this meeting at Printing Research?

10 A. Again, my recollection would be that it would be
11 in my office, but it could just as easily have been in
12 Howard's, but I do believe it was in my office.

13 Q. Why are you of that belief?

14 A. Just because I believe that conversation was
15 going on between Steve Baker and myself, and I believe
16 that when it was being explained to me, and I believe
17 that Howard came into that meeting and we took the
18 opportunity to explain to Howard why and what.

19 Q. That is your belief or your recollection?

20 A. My recollection.

21 Q. When did you tell Ron Rendleman about this
22 process?

23 A. That wouldn't have been immediate. That would
24 have been months Howard had talked to us about the
25 possibility of us going forward, then from there on we

1 would have got the various people involved.

2 Q. Well, you say in --

3 A. In fact, the other person that would have
4 clearly been involved in those meetings would have been
5 Steve Garner.

6 Q. In what meetings?

7 A. In the meeting of the 15th, I would believe.

8 Q. You say Rendleman would have not been involved
9 until --

10 A. Not until June 15th, probably directly after the
11 Southwestern Graphics.

12 Q. And that's because why?

13 A. Or actually after Corrugated '94.

14 Q. So that's after --

15 A. It would be into July before we spoke with
16 Ron --

17 Q. So you think --

18 A. -- probably.

19 Q. Early July you might have spoken with Ron?

20 A. Probably.

21 Q. And why would you have spoken to Ron about it?

22 A. Just because it was for whatever reason, and you
23 would have to understand the corporation to know that
24 there was -- engineers were not available.

25 Q. I'm sorry. I'm listening.

1 A. I have lost focus totally.

2 Q. Let's see if we can redirect your focus. Do you
3 want to -- do you feel like you've answered the question
4 or are you uncertain?

5 A. I don't know. I have no idea.

6 MR. WILSON: Let's read the question back
7 and give you another shot at it.

8 (Requested text read)

9 THE WITNESS: The structure of the
10 corporation was such that no immediate engineers would be
11 available for a product of this nature. And during
12 discussions with Howard and Steve Garner it would be my
13 recollection that we would have then gone to Ron as being
14 a person that was surely capable of designing a coater
15 that we would need to achieve the sort of results that we
16 were looking for and it would be necessary with this
17 process.

18 Q. You say we would have gone to Ron as a person.
19 Who is we?

20 A. We being Steve Garner, probably, and myself.

21 Q. Okay. So am I --

22 A. And maybe Howard, maybe.

23 Q. I see. But I'm hearing it's a possibility that
24 Howard would give you the go-ahead and then you guys
25 would interface with Ron; is that right?

1 A. Yes.

2 Q. Sort of Howard says it's okay?

3 A. Yes.

4 Q. Ron, can you do this?

5 A. Yeah.

6 Q. And did Mr. Rendleman start working in Ernest
7 once you told him in early July about this?

8 MR. PINKERTON: Object to the form of the
9 question.

10 THE WITNESS: I have no idea.

11 Q. (By Mr. Wilson) Did you check in with
12 Mr. Rendleman?

13 A. We checked in, yes.

14 Q. How often did you check in with Mr. Rendleman?

15 A. As often as one could.

16 Q. So I take that to mean any time you ran into him
17 or something like that? I mean, as often as one could,
18 it could be every second. I'm trying to get some feel
19 here.

20 A. Probably certainly every other day or so. I
21 would guess.

22 Q. Okay. And so every other day, what kind of
23 progress did he make in July, to your knowledge?

24 A. Not very much.

25 Q. And how about in August?

1 A. Not very much.

2 Q. And did that concern you?

3 A. Yes, very much so.

4 Q. Did you say anything to Mr. Rendleman about it?

5 A. I said to his superiors, not to Ron, no.

6 Q. To who did you say?

7 A. At that time I believe his boss was Ed Shafler,
8 I believe.

9 Q. And when you checked in with him every other day
10 in September, had he made any progress?

11 MR. PINKERTON: Object to the form of the
12 question.

13 THE WITNESS: I can't honestly answer that.

14 Q. (By Mr. Wilson) Did my question mischaracterize
15 anything in a way that concerns you?

16 A. No, no, I just don't recall what his progress
17 was at that time. I know --

18 Q. Well, you were about to close this dryer sale,
19 right? I'm sorry, I cut you off.

20 A. The code I had had no -- there was no immediate
21 and direct relationship between the two projects.

22 Q. Okay. Were you given a target date by
23 Williamson about when to develop the thing?

24 A. No.

25 Q. Did they express any urgency to you about

1 developing it?

2 A. Urgency?

3 Q. Well, they didn't give you a target date?

4 A. No, but I --

5 Q. I'm trying to get some feeling for sort of
6 how -- when they expected to do it, I guess, is what I'm
7 asking you?

8 A. There wasn't -- there was an urgency, but I
9 wouldn't say that it was a threatening urgency. It was
10 a -- we would like to get this done and do you think you
11 have the ability to make such a unit for us.

12 Q. Okay. I'm more and more getting the feeling
13 about these 20 meetings that are listed in this
14 statement -- do you know what I'm referring to?

15 A. Uh-huh.

16 Q. And I think the statement more or less says it
17 itself, but you correct me if I'm wrong. A large portion
18 of these meetings, whether we are talking about the
19 number of meetings or within a meeting what was discussed
20 were really devoted to other things; is that fair, and
21 that this project was discussed --

22 MR. PINKERTON: Object to the form of the
23 question.

24 Q. (By Mr. Wilson) -- possibly as well?

25 MR. PINKERTON: Object to the form.

1 THE WITNESS: The meetings were ongoing in
2 both areas and ratios, there was probably as many
3 meetings about the process, the 363 process as there was
4 about the dryers and related equipment.

5 Q. (By Mr. Wilson) Meetings devoted exclusively to
6 the 363 process?

7 A. I wouldn't have said they were necessarily
8 devoted exclusively to it, but became that way,
9 sometimes.

10 Q. I want to show you a document that's dated
11 January 25th, 1995. I don't believe that's been made an
12 exhibit. I don't see it on my exhibit list.

13 MR. WILSON: Do you know, John?

14 MR. PINKERTON: I don't think so.

15 MR. WILSON: In any case, let's make it one
16 again, just to be safe. Could you mark that as
17 Exhibit -- is it 24?

18 (Deposition Exhibit 24 marked)

19 Q. (By Mr. Wilson) Do you recognize that document?

20 A. Yes.

21 MR. WILSON: In fact, let's mark another
22 document here. Let's make that 24A. Can you do that?

23 (Deposition Exhibit 24A marked)

24 Q. (By Mr. Wilson) Mr. Bird, you have --

25 A. These are both the same, aren't they?

1 Q. -- Exhibit 24 and Exhibit 24A. Well, that was
2 my question to you. They appear to me to be essentially
3 the same document. One is signed and the other isn't, is
4 the only difference I see, at a first look.

5 And then if you look a little closer there
6 on the -- I believe it's Exhibit 24, you have some
7 marginalia up at the top that says, John, hand carry, SB.
8 Did I get that right?

9 A. Yes.

10 Q. Okay. What do you take that handwriting at the
11 top of Exhibit 24 to be?

12 A. I think that there is a notation that I was hand
13 carrying it or that Steve was hand carrying it to
14 Williamson Printing.

15 Q. Okay.

16 A. Or had hand carried it to Williamson Printing.

17 Q. Whose handwriting is that, do you know?

18 A. That's Steve Baker's.

19 Q. Okay.

20 A. You can see -- you can compare that to his
21 signature there.

22 Q. Oh, good move. You're right.

23 And if we look at just for simplicity sake,
24 let's just talk about Exhibit 24 since they're identical,
25 except for one is signed and one isn't.

1 A. Yeah.

2 Q. So if we're looking at Exhibit 24, this is a
3 letter from Steve Baker to Jesse Williamson; is that
4 right?

5 A. It's from Steve Baker to Jesse Williamson.

6 Q. And it's copied to Bill Davis and to Steve
7 Garner --

8 A. Uh-huh.

9 Q. -- and to yourself, John Bird?

10 A. Right.

11 Q. And he's making a sales proposal here, isn't he?

12 A. He is.

13 Q. He says, "It was a great pleasure speaking with
14 you. We have enclosed product information and the
15 following Super Blue proposal."

16 A. Uh-huh.

17 Q. And then it looks like we have a proposal
18 attached.

19 A. Uh-huh.

20 Q. Last two pages are a summary of a proposal and a
21 proposal and then the first page in the attachment of the
22 letter is sort of a diagram, right?

23 A. One of the computer drawings that we spoke about
24 earlier.

25 Q. Not a CAD drawing, but a computer drawing?

1 A. A computer drawing.

2 Q. Well, I'm glad to get that clarified.

3 And do you see the legend on that drawing?

4 A. I do.

5 Q. The last thing in that legend is an EZB blanket
6 coater?

7 A. Correct.

8 Q. Is that what you would have called an EZ Coater
9 earlier when we were talking about a cartridge coater?

10 A. No, they are distinctly different.

11 Q. Okay. What would this -- you couldn't call this
12 a cartridge coater or not?

13 A. No.

14 Q. I mean, I understand it's not the EZ Coater,
15 but --

16 A. I don't think you can call either of them a
17 cartridge coater.

18 Q. Okay.

19 A. But the EZ Coater was installed in the delivery.
20 When I say in the delivery, it's in the section of the --
21 if you --

22 Q. Well, we can just hold it up and show the camera
23 there.

24 A. The EZ Coater would go in this position here.

25 Q. Okay.

1 A. Whereas the EZB goes to a blanket cylinder,
2 which is what this cylinder is here, and hence the term,
3 EZB, which is EZ blanket coater.

4 Q. And this EZ Coater that you're talking about
5 that goes after the last L coating tower there is where
6 you pointed?

7 A. Uh-huh.

8 Q. Does that go to any of the cylinders?

9 A. I'm not sure I understand.

10 MR. PINKERTON: I want to object to the
11 form of the question. You said after the tower, and he
12 pointed to part of the tower.

13 MR. WILSON: Well, that's my question.

14 MR. PINKERTON: It's incorrect to say it's
15 after the tower.

16 Q. (By Mr. Wilson) That's my question. Where does
17 the EZ Coater go, the -- I think you pointed here before,
18 right?

19 A. The EZ Coater would go in here.

20 Q. Okay. And is that on that last coating tower or
21 is it after it?

22 A. It's essentially -- this is very difficult to
23 answer because the EZ Coater couldn't possibly go in this
24 position on this particular press.

25 MR. PINKERTON: Cartridge coater.

1 THE WITNESS: Cartridge, as you're calling
2 it, couldn't go in this position in this press.

3 Q. (By Mr. Wilson) Okay.

4 A. So it's a distinctly different application.

5 Q. All right.

6 A. But for terms of reference, if it was to go
7 anywhere on this press, that would be the position it
8 would go.

9 Q. It would touch the --

10 A. It would go touch the impression cylinder or go
11 to the impression cylinder of that press.

12 Q. Okay.

13 A. And there would be a blanket cylinder or a
14 cylinder that had been converted in that position to make
15 it into a blanket cylinder.

16 Q. Okay. Going back to the front page of this
17 letter, Exhibit 24, he says it was a great pleasure
18 speaking to you, and we've enclosed information. Do you
19 take that to mean that he had a telephone conversation
20 and that this proposal resulted?

21 MR. PINKERTON: Objection to the form of
22 the question.

23 Q. (By Mr. Wilson) Let me ask you if that's your
24 recollection. You were copied on this letter, right?

25 A. I wrote the letter.

1 Q. You wrote the letter, okay.

2 MR. WILSON: Do you have objection now,
3 Mr. Pinkerton?

4 MR. PINKERTON: I'll wait till you ask a
5 question.

6 MR. WILSON: All right.

7 Q. (By Mr. Wilson) When you wrote this letter why
8 did you mention you had just spoken with him before you
9 stated that you had enclosed product information?

10 A. Because it's generally, that's my opening
11 statement. This is classic John Bird that you're reading
12 here.

13 Q. Is that kind of -- I mean, I know in my
14 business --

15 A. We have about three or four starting statements.

16 Q. Right.

17 A. And whether I met with you or not I will say it
18 was a pleasure speaking with you.

19 Q. Really.

20 A. It makes it nice and easy in the computer.

21 Q. So you don't think this proposal followed a
22 telephone conversation?

23 A. No, I doubt it very much. I'm sure it probably
24 followed a meeting.

25 Q. It might have followed a meeting?

1 A. Oh, absolutely.

2 Q. Where this sort of thing was discussed?

3 A. Yes.

4 Q. So you document the meeting with a letter kind
5 of?

6 A. Yes.

7 Q. And then you send them something that maybe will
8 get you a sale?

9 A. Yes.

10 Q. Is that fair?

11 A. Yes, that's fair.

12 Q. If it will help your house cleaning there, you
13 can set that one aside.

14 A. Thank you.

15 Q. I am trying to be nice here.

16 A. You're doing very well.

17 Q. Okay. Thank you.

18 Now, I'm pretty sure this one has been made
19 an exhibit, and I think it's been marked --

20 MR. PINKERTON: At least twice.

21 Q. (By Mr. Wilson) -- as Number 15 in your
22 previous deposition. There's an annotation here,
23 document labeled meeting at Williamson Printing Company,
24 2-11-95, Exhibit 15.

25 (Discussion off the record)

1 Q. (By Mr. Wilson) Okay. We're going to talk
2 about that one by Bates number.

3 A. Okay.

4 Q. And I think it's the same as Exhibit 15 earlier.
5 It's got a Bates, PRI00671. Do you see that, Mr. Bird?

6 A. Yes, yes, I do.

7 Q. Down at the bottom?

8 A. Right.

9 Q. And this is titled meeting at Williamson
10 Printing Company, 2-11-95, and this also has marginalia
11 at the top. Do you see that, it says John?

12 A. Right.

13 Q. Does that look like Baker's handwriting again?

14 A. I don't think so.

15 Q. Okay. Do you recall receiving a copy of this?

16 A. I don't, but that doesn't mean I didn't. The
17 fact that it's got my name at the end.

18 Q. Is this -- who would create this kind of
19 document, in your experience, inside Printing Research?

20 A. I would have to say I think I would have created
21 it.

22 Q. Okay. So this is a -- sort of a memo about a
23 meeting?

24 A. It's a record of a meeting.

25 Q. And what was discussed?

1 A. Discussion is listed there.

2 Q. Well, I'm sorry, I misstated my question. It
3 talks about what was discussed in the meeting?

4 A. Right.

5 Q. Okay. So why do you create this kind of
6 document?

7 A. For the record.

8 Q. Okay.

9 A. I wasn't sure you've noted there wasn't much
10 record kept. I was trying to do that.

11 Q. You were trying to keep a record?

12 A. I liked to keep record, if I can.

13 Q. Why is that?

14 A. It's always nice to know what you've agreed and
15 what you haven't.

16 Q. Okay. And this letter that I told you to set
17 aside, Exhibit 24, there was a -- it was nice to know
18 sort of what you had proposed, too, right?

19 A. Uh-huh.

20 Q. Just good to keep records and business in
21 general, isn't it?

22 A. Yes.

23 (Deposition Exhibit 25 marked)

24 Q. (By Mr. Wilson) Mr. Bird, I've handed you an
25 exhibit marked Bird Exhibit Number 25. Could you

1 identify this letter?

2 A. It's a letter to Jesse confirming what we were
3 going to supply.

4 Q. Okay. It seems to refer back to this 2-11-95
5 meeting, doesn't it? Do you see that?

6 MR. PINKERTON: Object to the form.

7 Q. (By Mr. Wilson) Further to our meeting of
8 2-11-95?

9 A. It does.

10 Q. Okay. And would you understand that to be the
11 meeting that's memorialized in PRI00671?

12 A. I would.

13 Q. The memo we just spoke about?

14 A. Yes.

15 Q. Now, this talks about producing an
16 experimental -- I'm going to quote from it. "We are
17 producing an experimental EZ interstation flexo
18 printer/coater for installation on your Heidelberg
19 Speedmaster CD six-color plus LYL 40-inch press with a
20 target to be installed in the operational date of
21 March 15th, 1995. This unit for adaptation to the first
22 coating tower of the LYL."

23 . Could you tell me what that paragraph is
24 about? I mean, what's being installed there?

25 A. The -- a coater, a blanket coater an EZ

1 interstation, sorry, coater as we are calling it at that
2 time, was to be installed on the first of the coating
3 towers of that press, which I assume there would be a
4 drawing accompanying.

5 Q. There was not a drawing on this one. We could
6 refer to the earlier drawing if you want to show us in
7 Exhibit 24 that drawing.

8 A. Which would be what that machine is there.

9 Q. Okay. So you're pointing to the -- going right
10 to left in this drawing it's the first L?

11 A. Yes.

12 Q. After the printing stations?

13 A. Yes.

14 Q. Okay. And so that's a coating tower that it's
15 being mounted on; is that correct?

16 A. Correct.

17 Q. Why did Williamson request that it be mounted on
18 the coating tower, do you know?

19 A. It wasn't -- I'm not sure that it was so much of
20 a request of Williamson Printing as it was a need for us
21 to install at that position to get the ease of
22 installation and to get some knowledge of what would have
23 to be built to build interstation coaters further down
24 the line further upstream.

25 We had made, I believe at that time we

1 would have made the first short arm unit and we were
2 looking to install a second coater.

3 Q. I'm confused. You built the short arm, and it's
4 at Printing Research?

5 A. The -- I've got to get the dates here. No. I
6 don't know why. I don't know why.

7 Q. Well, it says this unit for adaptation to the
8 first coating tower at LYL. That sounds like it's got to
9 be adapted or changed somehow; is that fair?

10 A. Yes, that's very fair.

11 Q. Okay. And this EZ interstation flexo
12 printer/coater experimental one that's referred to here,
13 that of course is the Ferris wheel motion coater; is that
14 right?

15 A. Uh-huh.

16 Q. Sometimes referred to as the Rendleman coater in
17 the company; is that fair?

18 A. Yes.

19 Q. Was it mounted on a press at Printing Research
20 at this time?

21 A. No.

22 Q. Where was it?

23 A. In Ron's head.

24 Q. Oh, it had not even been built as of this date?

25 A. Not that I can recall.

1 Q. So this letter is dated February 16th and the
2 target for this thing that exists only in Ron's head to
3 be produced and operational is March 15th. Is it your
4 belief that that unit existing in Ron Rendleman's head
5 could be built in 29 days from scratch?

6 A. At the time, again, as I recall, the unit would
7 have -- the actual unit that would have been mounted in
8 this position would have been in pieces and/or would have
9 been in mock-up form out in Ron's shop.

10 Q. So it did not exist purely in Ron Rendleman's
11 head?

12 A. Yeah, you could say that, yes. It couldn't --
13 it wouldn't be just in his head, right.

14 Q. Why did Printing Research agree to provide it at
15 no charge to Williamson Printing Company?

16 MR. PINKERTON: Object to the form.

17 Q. (By Mr. Wilson) Do you see it says that in the
18 letter?

19 A. Yeah, yes, I do. It was -- from our point of
20 view it was a way to get a beta site for our coater. We
21 needed -- we needed to get the experience. We had never
22 run such a coater, never built such a coater before, and
23 it was important to get somewhere in a practical set up
24 to be able to understand and know what the parameters
25 were for that machine.

1 Q. I think I know what you mean by beta site, but
2 let's make sure. Do you mean sort of a test site or a
3 test bed?

4 A. Yes.

5 Q. That's what you mean?

6 A. Uh-huh.

7 MR. WILSON: I'd like to mark that, please,
8 as Bird 26.

9 (Deposition Exhibit 26 marked)

10 Q. (By Mr. Wilson) Mr. Bird, I've handed you an
11 exhibit marked Bird 26.

12 A. Uh-huh.

13 Q. It's a letter dated May 12th, 1995 to Jerry
14 Williamson from you; is that correct?

15 A. Yes.

16 Q. Did you look at this letter yesterday with your
17 lawyers?

18 A. No.

19 Q. Have you looked at it with them previously?

20 A. I don't recall.

21 Q. Do you recognize the letter?

22 A. I recognize it as being, again, another standard
23 form letter that I would have put together, yes.

24 Q. Okay. Well, there seems to be some things that
25 are being discussed between Williamson Printing

1 Corporation and Printing Research, and this sort of
2 documents those negotiations; is that fair?

3 A. Yes, that's very fair.

4 Q. And the numbered paragraphs there are discussion
5 points; is that fair?

6 MR. PINKERTON: Object to the form.

7 Q. (By Mr. Wilson) Do you understand what I mean
8 by discussion points?

9 A. I think they're what I -- I'm confirming what I
10 think that we had agreed.

11 Q. Okay. And paragraph 1A there, do you see where
12 it says lithoflex -- well, the lead-in above paragraph
13 1A, "The following confirms our discussion," that's what
14 you meant by your last comment?

15 A. Right.

16 Q. And we're looking at paragraph one, which says
17 EZ interstation flexo printer/coater?

18 A. Right.

19 Q. That's the Ferris wheel device, the Rendleman
20 coater, and it says, "Lithoflex as used by PRI to
21 describe its EZ printer/coater process is not in conflict
22 with WPC."

23 Did PRI, that is Printing Research and
24 Williamson Printing referred to here as WPC, I take it?

25 A. Uh-huh.

1 Q. Did they discuss PRI's use of the term
2 lithoflex?

3 A. Yes.

4 Q. And why was there discussion about that term?

5 A. Because I had mentioned to Jesse Williamson that
6 we would like to use the terminology lithoflex, and Jesse
7 Williamson advised us that it would be a mistake to do
8 that since there was already the use of the name out in
9 the field.

10 Q. But was it used by Williamson out in the field?

11 A. No.

12 Q. Okay. And --

13 A. He suggested that we might be conflicting with
14 someone else's use of the name.

15 Q. What did you want to use the term lithoflex to
16 describe?

17 A. We were using it to describe the coater.

18 Q. But that's not what you say in paragraph 1A, is
19 it?

20 A. Well, we're talking about the use of the name.

21 Q. Well, you say -- you don't say the coater. You
22 say lithoflex as used by PRI to describe its EZ
23 printer/coater process is not in conflict with WPC.

24 A. But that's not what we mean. Your, again,
25 getting back to what is is. We're not talking about the

1 process, we're talking about the coater.

2 Q. I am getting back to what is is, because I think
3 sometimes words are important, and I'm curious why you
4 describe it as PRI's process?

5 A. Well, we don't mean it in the sense of a
6 process. We mean it in the sense of a coater.

7 Q. Then --

8 A. It's bad language.

9 Q. Is the use of the word process just -- it's
10 superfluous?

11 A. It superfluous.

12 Q. If you had to do it again, you would cross that
13 out?

14 A. I wouldn't put that in, right.

15 Q. Jerry Williamson is a trained lawyer, isn't he?

16 A. I believe so.

17 Q. He has a law degree from SMU, is that your
18 understanding?

19 A. That's what I believe.

20 Q. Did he call you and say, hey, hey, hey, it's not
21 PRI's process?

22 A. Jerry Williamson I don't think read it in the
23 same connotation that you're putting on it at all.

24 Q. So is the answer he did not call you?

25 A. The answer is he did not call me, right.

1 Q. About that point?

2 MR. HARRIS: I would like to take quite a
3 short break now so we can kind of line up where we are.
4 Five to ten.

5 MR. PINKERTON: Okay.

6 VIDEOGRAPHER: We're off the record at
7 11:48.

8 (Recess taken)

9 VIDEOGRAPHER: We're on the record at
10 11:59.

11 Q. (By Mr. Wilson) Mr. Bird, we're back from a
12 short break and I am still looking at the May 12th, 1995
13 letter, Bird Exhibit 26, and I wanted to ask you about
14 paragraph 1B. It says, "PRI is preparing comment for an
15 upcoming coating article in Graphic Arts Monthly relative
16 to the EZ printer/coater family." What is Graphic Arts
17 Monthly?

18 A. A magazine.

19 Q. Is it a prominent publication in the field?

20 A. Yes.

21 Q. Where would you rank it, most prominent?

22 A. At that time it was the most prominent.

23 Q. So would that be a significant event, get
24 yourself into an article in that?

25 A. Yes.

1 Q. And would you expect that Printing Research and
2 possibly Williamson executives might be looking for that
3 article to come out?

4 MR. PINKERTON: Object to the form.
5 Compound.

6 THE WITNESS: You need to ask the question
7 again. Sorry.

8 Q. (By Mr. Wilson) Were the folks at Printing
9 Research eager to see that article?

10 A. Yes.

11 Q. And would it be your expectation that the people
12 at Williamson would have been eager to see it as well?

13 MR. PINKERTON: Object to the form.
14 Calling for speculation.

15 THE WITNESS: Yes. Otherwise I wouldn't
16 have made the suggestion.

17 Q. (By Mr. Wilson) That's why you put it in the
18 letter?

19 MR. PINKERTON: Object to the form.

20 THE WITNESS: Yes.

21 Q. (By Mr. Wilson) And do you recall that such an
22 article did appear in Graphic Arts Monthly?

23 A. I don't think it did.

24 Q. You don't think it did?

25 A. No.

1 Q. Who was on slate to prepare comment for that
2 article?

3 A. What do you mean?

4 Q. Well, I mean it says PRI is preparing comment.
5 Obviously the corporation is not a living entity.

6 A. That would have been me.

7 Q. That would have been you?

8 A. Yes.

9 Q. The last page of this letter --

10 MR. PINKERTON: Document number?

11 Q. (By Mr. Wilson) Is -- I have document number
12 PRI00651. Is that what you have, Mr. Bird?

13 A. I have 00650.

14 Q. There is an attachment to it?

15 A. Okay.

16 MR. WILSON: Thank you for that
17 clarification, Mr. Pinkerton.

18 Q. (By Mr. Wilson) Okay. So what we have here is
19 a two-page letter with an attachment, right? We're
20 talking now about the attachment that's titled WPC/PRI
21 Partnering Agreement for the Super Blue EZ interstation
22 flexo printer/coater.

23 If we look back to page one of the letter,
24 paragraph 1D it says, "A separate discussion document
25 addressing exclusivity is attached." Is that what this

1 attachment is?

2 A. Yes.

3 Q. A document addressing exclusivity?

4 A. Right.

5 Q. If Williamson Printing Company owned the process
6 for the 363, the invention that was in there, why would
7 it want to enter into an agreement such as is shown here
8 at PRI00651, do you know?

9 MR. PINKERTON: Object to the form of the
10 question. Asking the witness to speculate about what is
11 in Williamson's mind. Lack of foundation. No knowledge.

12 Q. (By Mr. Wilson) What did they tell you when you
13 raised this question --

14 MR. PINKERTON: Objection to form.

15 Q. (By Mr. Wilson) -- about an exclusivity
16 agreement?

17 MR. PINKERTON: Object to the form. Vague
18 and ambiguous.

19 MR. WILSON: There is nothing ambiguous
20 about it.

21 Q. (By Mr. Wilson) What did they tell you?

22 MR. PINKERTON: About what?

23 THE WITNESS: Would you ask the question --

24 Q. (By Mr. Wilson) Sure. Let me give you a
25 person. What did Jerry Williamson -- this letter is

1 addressed to Jerry Williamson?

2 A. Uh-huh.

3 Q. You made this proposal or this document of your
4 discussions here at this attachment?

5 A. Right.

6 Q. And the discussions you had going into the
7 preparation of this document, what did Jerry Williamson
8 say to you about exclusivity?

9 MR. PINKERTON: Objection to the form of
10 the question. Assumes facts not in evidence.

11 THE WITNESS: I really still have a problem
12 understanding your question, quite honestly.

13 Q. (By Mr. Wilson) Well, let's look at paragraph
14 one of the -- let's just call this thing the exclusivity
15 agreement.

16 A. Okay.

17 Q. Since that's what you call it in your letter.

18 A. Okay.

19 Q. So I'm looking at this exclusivity agreement.
20 The attachment to this letter, which is Exhibit 26.

21 A. Uh-huh.

22 Q. Paragraph one, PRI agrees to manufacture and
23 supply one Super Blue EZ interstation flexo
24 printer/coater, and there's a number given, on an
25 exclusive basis.

1 A. Uh-huh.

2 Q. So PRI was agreeing to supply this thing
3 exclusively to Williamson; is that right?

4 MR. PINKERTON: Object to the form of the
5 question about any agreement. It's a proposal, as set
6 forth in the letter.

7 Q. (By Mr. Wilson) PRI is proposing to agree to
8 produce the machine on an exclusive basis; is that right?

9 A. We were proposing that, yes.

10 Q. And so, in fact, if you hadn't agreed, you
11 didn't have any obligation to produce it on an exclusive
12 basis, did you?

13 MR. PINKERTON: Object to the form of the
14 question. The witness doesn't have qualifications to
15 answer the question.

16 THE WITNESS: I don't have qualifications
17 to answer that.

18 Q. (By Mr. Wilson) Why not?

19 A. I don't know the answer to that question.

20 Q. Did you have any reason to think that Printing
21 Research couldn't produce this thing to anybody it wanted
22 to at the time this letter was written?

23 A. At the time this letter was written we -- I
24 believe we could have produced it for anybody we wanted
25 to, yes, however did we have the ability, did we have a

1 beta site, no.

2 Q. Okay.

3 A. So it would be my belief that it was very much
4 in our interest to try and get an exclusive agreement.

5 Q. Okay. I think I understand. Maybe you could
6 elaborate on what you mean. Is what you're saying that
7 it was in Printing Research's interest to produce it for
8 Williamson exclusively in order to use Williamson as a
9 beta platform, I guess you'd call it?

10 MR. PINKERTON: Object to the form.

11 THE WITNESS: Yes.

12 Q. (By Mr. Wilson) So Printing Research was
13 offering something; is that right?

14 A. Yeah, it also served another purpose, of course,
15 and that is that we supplied it free. Therefore, any
16 rights to patent the product would be left open for us.

17 Q. Okay.

18 A. Which is -- which was very much in our interest
19 to do.

20 Q. Okay. And in fact, you applied for a patent,
21 didn't you?

22 A. We did, yes.

23 Q. And in May of 1995; is that right?

24 A. Somewhere around there.

25 Q. May 4th, 1995, I think, is the actual

1 application?

2 A. Yes.

3 Q. When you were in meetings with Dennis Griggs
4 about that patent application, did you contribute to any
5 of the language that went into the application?

6 A. Some of the language.

7 Q. Did you have some pretty detailed discussions
8 about some of the language?

9 A. Yes.

10 Q. So you, John Bird, were actively talking with
11 Mr. Griggs and contributing?

12 A. Yes.

13 Q. And in fact, you had done that on other patents
14 as well, had you not?

15 A. Yes.

16 Q. So in this exclusivity agreement or this
17 proposal here --

18 A. Uh-huh.

19 Q. -- PRI was offering something to Williamson; is
20 that fair?

21 A. We were -- yes.

22 Q. Offering to do it for them on an exclusive
23 basis?

24 A. Yes.

25 Q. You were offering to give them something?

1 A. Yes.

2 Q. And you were expecting to get something in
3 return?

4 A. Right.

5 MR. PINKERTON: Object to the form of the
6 question.

7 Q. (By Mr. Wilson) You understood my question,
8 didn't you?

9 A. Yes.

10 Q. Okay. Now, this exclusive basis that's talked
11 about here in this exclusivity proposal or exclusivity
12 agreement proposal, it's defined further down; is that
13 right?

14 A. Correct.

15 Q. Okay. And it's going to be exclusive both as to
16 a time period and a territory; is that right?

17 A. Correct.

18 Q. And you had subsequent discussions with
19 Mr. Jerry Williamson about this topic, didn't you?

20 A. Jerry and Jesse, yes.

21 (Deposition Exhibit 27 marked)

22 Q. (By Mr. Wilson) Mr. Bird, I've had the court
23 reporter mark as an Exhibit Bird 27, a document with
24 Bates label PRI00945 through 947, and do you see this to
25 be an article appearing in Graphic Arts Monthly?

1 A. Yes, I do.

2 Q. And if you look down on the lower left corner,
3 do you see what month it appeared in Graphic Arts
4 Monthly?

5 A. June of '95.

6 Q. And portions of this document have -- somebody's
7 marked on them. Do you see the little boxes?

8 A. Uh-huh.

9 Q. And if you look at those boxes you see
10 discussions about Printing Research.

11 A. Uh-huh.

12 Q. For example, the box on the first column on the
13 first page --

14 A. Right.

15 Q. -- Printing Research introduced its Super Blue
16 EZ interstation flexo printer/coater?

17 A. Right.

18 Q. And then in the third column on that page there
19 is some discussion about the Printing Research device.
20 Are you with me?

21 A. Yes, I am.

22 Q. And do you see who explained Printing Research's
23 position?

24 A. Yes, I do.

25 Q. Who is that?

1 A. That's me.

2 Q. Is it you?

3 A. Yes, it is.

4 Q. It says Warren Bird.

5 A. Oh, it says Warren Bird, sorry. It does,
6 indeed. Yes, it does.

7 Q. But you think it might have been you?

8 A. Well, I saw Bird there. No, in this case -- now
9 it comes back that Warren did speak to them.

10 Q. Is Warren any relation of yours?

11 A. Yes, he is. Yes, a very dearly loved relation.

12 Q. A dearly loved relation, I'm glad to hear that
13 that's still the case.

14 A. Very much so. He's my oldest son.

15 Q. He's your oldest son, and he was an employee at
16 Printing Research?

17 A. He was an employee of Printing Research.

18 Q. He apparently gave some comments to Graphic Arts
19 Monthly?

20 A. Yes, he did.

21 Q. Look at that third column on the first page, the
22 box there, the third paragraph in that box. Well, really
23 the first three paragraphs. They talk about the process,
24 don't they? And by that I mean the 363 process.

25 A. Yeah, they do.

1 Q. Okay. We're laying down flexo upstream.

2 A. Uh-huh.

3 Q. We're overprinting with lithographics.

4 A. Right.

5 Q. And we're doing it all in a single pass.

6 A. Right.

7 Q. So that would be some pretty hot topic for both
8 companies in this litigation, wouldn't it?

9 A. In this --

10 MR. PINKERTON: Object to the form of the
11 question.

12 THE WITNESS: Yes, I believe so.

13 Q. (By Mr. Wilson) And they would be interested to
14 know what was said in this prominent publication,
15 wouldn't they?

16 A. Uh-huh.

17 MR. PINKERTON: Object to the form of the
18 question.

19 Q. (By Mr. Wilson) I'm sorry, but your answer was?

20 MR. PINKERTON: You're asking -

21 THE WITNESS: I don't know that, but --

22 MR. PINKERTON: The witness shouldn't
23 speculate and you're asking him to speculate and I object
24 to it.

25 Q. (By Mr. Wilson) Based on the 20 meetings you

1 had with these guys that you've documented, based on a
2 year of experience and interacting with Williamson
3 Printing and based on your several years of employment at
4 Printing Research, is it fair to say in your mind that
5 both companies would be interested about what is said in
6 this prominent publication about this process?

7 MR. PINKERTON: Objection to the form of
8 the question. It's calling for speculation about
9 something that he doesn't know anything about in the mind
10 of Williamson Printing Company.

11 Q. (By Mr. Wilson) Would that be your expectation,
12 that they would be interested?

13 A. I don't know. I honestly don't know.

14 Q. You don't know because of what he said?

15 MR. PINKERTON: Object to the form of the
16 question.

17 THE WITNESS: No, I don't know -- I don't
18 know what's in their mind.

19 MR. WILSON: I don't want to be rough, but
20 come on, Mr. Bird.

21 MR. PINKERTON: Object to the form of the
22 question. He said he didn't want to say what's in their
23 mind. He doesn't know.

24 MR. WILSON: How about if I refer to it as
25 a speaking objection instead of a standing objection. I

1 object to your speaking objection. That coaches the
2 witness, Mr. Pinkerton.

3 Go ahead. We'll trade speeches and then
4 we'll get on with the question.

5 MR. PINKERTON: No, that's fine. You want
6 speculation and gross speculation on the record, that's
7 up to you, but I don't think it's proper. So we'll
8 object to it all day long.

9 MR. WILSON: Well, let's ask you about --
10 I'm sorry. Are you done?

11 MR. PINKERTON: Your witnesses have -- you
12 have cautioned your witnesses not to speculate numerous
13 times.

14 MR. HARRIS: He hasn't.

15 MR. PINKERTON: Mr. Harris has.

16 MR. WILSON: Mr. Pinkerton, that's the
17 first time I've seen it, so I've got to comment on it.
18 You have two hairs out of place.

19 MR. PINKERTON: I don't know what that
20 means.

21 MR. WILSON: It's very distracting. If you
22 would just brush them back for me.

23 MR. PINKERTON: No, if they're distracting
24 you I want to leave them.

25 MR. HARRIS: I only see one.

1 MR. PINKERTON: I'll get rid of those.

2 MR. WILSON: I would be pleased to borrow
3 them if you've got some to lend.

4 Q. (By Mr. Wilson) Let's look again at this first
5 page here. It says there that Bird -- you see toward the
6 bottom of that right-hand column.

7 A. Uh-huh.

8 Q. Bird reports that the printer/coater is
9 receiving tremendous reception from printers of wine
10 labels, greeting cards, fine art reproductions, and
11 specialty packaging. In conjunction with the unit,
12 Printing Research is marking both its cold UV and HV hot
13 air interstation delivery drying systems.

14 Is that statement about the tremendous
15 reception that was being had, is that a true statement as
16 of June of 1995?

17 A. He was basing that on the market research that
18 we spoke about before that I carried out. If you look at
19 those areas that he's referring to, they're all
20 specialist areas of application that I carried out market
21 research and discovered there was a very large and very
22 vibrant interest in the product.

23 Q. What printers of wine labels, greeting cards, or
24 fine art reproductions or specialty packaging, for that
25 matter, had expressed, I guess, a tremendous interest or

1 tremendous reception?

2 A. You want me to list them?

3 Q. Please.

4 A. Hallmark Cards, American Greetings in the card
5 business. In labels, St. Louis Litho and Flemming
6 Packaging, which is actually a label, wine label
7 corporation. Carlton's. I don't remember their name.
8 They're name escapes me, but a company in Pennsylvania --
9 excuse me.

10 MR. HARRIS: I was trying to talk to him.

11 THE WITNESS: There was a number, I spoke
12 to at last two or three corporations of each segment of
13 the marketplace.

14 Q. (By Mr. Wilson) So you had spoken to Hallmark
15 Cards?

16 A. Yes.

17 Q. Did Printing Research make an effort to sell
18 these units to Hallmark Cards?

19 A. I made an effort to sell these units.

20 Q. You personally?

21 A. Yes.

22 Q. Were you the primary contact with Hallmark
23 Cards?

24 A. At one stage I was, yes, before I left.

25 Q. And when did you leave?

1 A. In '97.

2 Q. And when you were talking to Hallmark Cards --

3 A. Got fired, actually, I didn't leave.

4 Q. Okay. When you were talking to Hallmark Cards
5 about this product who was your main point of contact
6 there?

7 A. I had several. There was Walter Ramsfelder --
8 not Ramsfelder, Rasmussen.

9 Q. Was it Jim Rasmussen?

10 A. Jim Rasmussen. Jim Rasmussen. There was
11 several.

12 Q. Was Steve Garner active in those negotiations?

13 A. I don't think so. I don't think so. Maybe. I
14 don't recall. We had these companies visit us, too. I
15 mean, we went there, they came to us.

16 Q. Hallmark visited Printing Research?

17 A. I believe so.

18 Q. Did they do tests with the EZ interstation flexo
19 printer/coater?

20 A. Not with the interstation. We didn't have one
21 for them to demonstrate with, so if we did we would have
22 done it with the rack back coater if we did any tests for
23 them.

24 Q. And were they -- to your knowledge were they
25 interested? Was Hallmark cards interested?

1 A. I believe so.

2 Q. And were they interested in the interstation
3 device?

4 A. I believe so.

5 Q. And Jim Rasmussen would have dealt with that
6 with you?

7 A. Jim Rasmussen certainly would have been a main
8 contact, yes.

9 Q. Okay. Did Jim Rasmussen tell you why Hallmark
10 didn't purchase a unit, a flexo coater?

11 A. No, he did not tell me.

12 Q. Okay. But you were leading that sales effort;
13 is that what I just heard you say?

14 A. At the time I was leading the marketing effort.

15 Q. Yeah.

16 A. To help understand where and what the product
17 potential was, and I had made presentations to Jim
18 Rasmussen, as I had to the various people in these
19 various other organizations that I spoke of, but -- and
20 they had all shown me tremendous interest, yes.

21 Q. Do you see in this Graphic Arts article where
22 Warren Bird says that it's a patented process?

23 A. Yes.

24 Q. What do you think of that?

25 A. He's referring --

1 MR. PINKERTON: Objection to form. Go
2 ahead.

3 THE WITNESS: I think he's referring to
4 363.

5 Q. (By Mr. Wilson) Well, this is June 1995 --

6 A. Uh-huh.

7 Q. -- and there wasn't an application for the 363
8 until August of 1995?

9 A. Okay. Well, he's referring to the WIMS patent.

10 Q. Oh, he's referring to the WIMS patent?

11 A. Yes, which we've always understood was the --
12 was, of course, what Williamson had patented.

13 Q. We means who?

14 A. We, Printing Research.

15 MR. PINKERTON: Counsel, where are you
16 referring to in the document about the patent?

17 MR. WILSON: You know, I was just looking
18 for that. I could have sworn he says it.

19 MR. PINKERTON: You didn't want to mislead
20 this witness about what this article says, did you?

21 MR. WILSON: No, I surely didn't because
22 you would make me look like a fool at trial.

23 MR. PINKERTON: I didn't think you would
24 want to do that.

25 MR. HARRIS: What have you found or not

1 found?

2 MR. PINKERTON: I haven't found it. That's
3 why I was asking. It might be in here. I don't know. I
4 just don't know where it was.

5 THE WITNESS: It wouldn't be out of order
6 for us to have mentioned it, though, because in fact
7 whenever --

8 MR. PINKERTON: You can just hold off. He
9 might ask --

10 MR. HARRIS: Don't coach the witness. Now
11 you really are.

12 MR. WILSON: I'd like to hear his comment.

13 MR. PINKERTON: You want to hear it?

14 MR. HARRIS: Yes.

15 MR. PINKERTON: Go ahead and say whatever
16 you want to say, John. Whatever you want -- they want
17 you to volunteer. What would you like to say?

18 THE WITNESS: Whenever any presentation was
19 done of the finding of the product I always pointed out
20 the fact that it was a patented process to any of the --
21 any representation I made during that market research
22 period and any other period. So yes, it wouldn't be
23 untoward to find that statement said in there.

24 MR. PINKERTON: What patent are you
25 referring to?

1 THE WITNESS: I'm referring to the WIMS
2 patent.

3 MR. PINKERTON: Any other patents?

4 THE WITNESS: No.

5 MR. PINKERTON: Any other applications?

6 THE WITNESS: Well, we obviously knew
7 that --

8 MR. WILSON: I'm going to object to you
9 leading the witness. Go ahead.

10 THE WITNESS: It's all part of the same
11 occasion.

12 MR. PINKERTON: Go ahead. Finish your
13 statement.

14 THE WITNESS: We knew that Williamson, of
15 course, were filing patents on the improvement of the
16 WIMS patent.

17 MR. PINKERTON: Was that information made
18 known to those people you talked to?

19 MR. WILSON: I'm sorry. Can we --

20 THE WITNESS: No.

21 MR. PINKERTON: Yeah. You want to --

22 MR. WILSON: I want to cut you a little
23 slack, but I sort of want to go in order, too.

24 MR. PINKERTON: You want him to volunteer,
25 but you only --

1 MR. WILSON: Yeah, that's right.

2 MR. PINKERTON: Well, is there a statement
3 in here about it being patented?

4 MR. WILSON: I don't see it in there right
5 now. I'll -- I'd rather get on to something else. It
6 might be in there, but just not in the highlighted
7 portions.

8 MR. PINKERTON: Okay.

9 MR. WILSON: But it is or it isn't.

10 Q. (By Mr. Wilson) In any case you think it would
11 be okay to say it's patented?

12 A. Yes, it wouldn't be untoward to say it, I think.

13 Q. Okay.

14 A. We think -- I would think it would be advisable,
15 quite frankly.

16 Q. We talked earlier about drawings and sketchings
17 coming from Printing Research to Williamson for use in
18 the patent, and what I'd -- I'd like to turn it around
19 and ask you are you aware of any drawings or sketchings,
20 sketches, hand-drawn, computer, or otherwise coming from
21 Williamson Printing to Printing Research about the Ferris
22 wheel motion coater?

23 A. I never laid any claim to the Ferris wheel
24 motion.

25 Q. Okay. So is your answer you are not aware of

1 any drawings?

2 A. I'm not aware of any drawings.

3 Q. And I think it's your first declaration, but
4 just tell me if I'm mischaracterizing. You didn't feel
5 like you had any obligation to tell them that you were
6 patenting that device, did you?

7 A. No.

8 Q. And you knew you were patenting it. You were
9 one of the patentees, right, one of the inventors
10 listed --

11 A. Right.

12 Q. -- on the application, and you didn't tell them?

13 A. No.

14 Q. Did you have any sense that Howard or Ron
15 thought they needed to tell Williamson Printing?

16 MR. PINKERTON: Object to form.

17 Q. (By Mr. Wilson) Did they ever say to you in a
18 meeting, hey, shhh, we're going to patent this thing, you
19 know, hush, hush?

20 MR. PINKERTON: Object to the form of the
21 question.

22 Q. (By Mr. Wilson) With regard to Williamson were
23 they trying to keep it secret that you could tell? Did
24 they tell you they were trying to keep it secret, that's
25 my question?

1 A. Who?

2 MR. PINKERTON: Counsel --

3 Q. (By Mr. Wilson) Did Howard DeMoore tell you he
4 was trying to keep the fact that he was patenting the
5 flexo coater, did he tell you he was trying to keep it a
6 secret from Williamson?

7 MR. PINKERTON: I'll object. We had four
8 questions, maybe five, maybe six.

9 MR. WILSON: I'm erasing them all.

10 MR. PINKERTON: Okay.

11 Q. (By Mr. Wilson) Here's the question.

12 A. Okay.

13 Q. Did Howard W. DeMoore, named plaintiff in this
14 case, did he tell you, John W. Bird, that he was trying
15 to keep secret from Williamson Printing or any employees
16 of Williamson Printing the fact that he was putting in a
17 patent application on May 4th, 1995?

18 A. I can't honestly say that I recollect.

19 Q. You don't remember?

20 A. I can't honestly say that I recollect, but it
21 wouldn't be uncommon for him to say that.

22 Q. I see.

23 A. But I don't honestly recollect.

24 Q. But you don't believe there was an obligation to
25 tell Williamson?

1 MR. PINKERTON: Object to the form of the
2 question.

3 Q. (By Mr. Wilson) You told me that earlier, now.

4 A. I honestly don't believe it was.

5 Q. Okay. And you didn't tell him?

6 A. No.

7 Q. And I think you've also testified that you knew
8 that Williamson was patenting -- it's a hard word for me.

9 A. The process.

10 Q. Yeah, making a patent on the process. They told
11 you in January they were going to make a patent
12 application?

13 A. Uh-huh.

14 Q. And let's turn it around. Would they have any
15 obligation to tell Printing Research that they were going
16 to make a -- file a patent application?

17 MR. PINKERTON: Object to the form. Lack
18 of knowledge. Lack of --

19 THE WITNESS: I have no idea.

20 MR. PINKERTON: -- qualification.

21 Q. (By Mr. Wilson) Well, you don't think Printing
22 Research had an obligation. Would you have expected them
23 to tell you --

24 MR. PINKERTON: Object to the form.

25 Q. (By Mr. Wilson) -- as a matter of ethics?

1 MR. PINKERTON: Object to the form.
2 Calling for speculation.

3 THE WITNESS: I really -- I wouldn't --

4 Q. (By Mr. Wilson) I'm asking about your personal
5 ethics in the world of inventing?

6 MR. PINKERTON: Object to the form.

7 THE WITNESS: I don't have an opinion on
8 that. I really don't.

9 Q. (By Mr. Wilson) Okay. You have no opinion as
10 to whether they had an obligation to tell Printing
11 Research?

12 A. They told use, so --

13 Q. Okay.

14 A. But did they have an obligation, I don't know.

15 Q. Suppose they had not, would you have been
16 disappointed?

17 MR. PINKERTON: Object to the form.
18 Irrelevant. Asking for speculation --

19 THE WITNESS: I don't know whether I would
20 or not.

21 MR. PINKERTON: -- and facts not in
22 evidence.

23 Q. (By Mr. Wilson) Would you have felt betrayed?

24 MR. PINKERTON: Object to the form.

25 Q. (By Mr. Wilson) It's their invention. Did they

1 have an obligation? According to you it's their
2 invention. Did they have an obligation to tell you when
3 they patent their invention?

4 MR. PINKERTON: Object to the form. Lack
5 of knowledge.

6 Q. (By Mr. Wilson) You can answer, Mr. Bird.

7 MR. PINKERTON: Lack of qualifications.
8 All of the above. Can I have a running objection on this
9 line?

10 MR. WILSON: Yeah, I'd prefer you take a
11 running objection rather than make a speaking objection.

12 MR. PINKERTON: Thank you. I don't think
13 I've spoken. I'm just --

14 Q. (By Mr. Wilson) Do you understand the question
15 that's been put to you?

16 A. I think it's lost all sensibility with me.

17 Q. Mr. Pinkerton has a running objection, and I'm
18 going to try to get an answer out of you, so hopefully
19 we'll take all of his objections that he just gave and
20 we'll apply them to this question and let's see if we can
21 get an answer.

22 Do you think Williamson Printing had an
23 obligation to tell you or anyone at Printing Research
24 that they planned to patent the process and apparatus now
25 described in the 363?

1 A. I don't have an opinion.

2 MR. PINKERTON: We're at 12:30. Could we
3 talk about the procedure for the remainder of the day?

4 MR. WILSON: Well, he needs to get out at
5 3:30.

6 MR. PINKERTON: He needs to leave here at
7 3:30.

8 MR. WILSON: I wondered if we could just
9 plow through.

10 MR. PINKERTON: We're going to have to take
11 a break because he needs a lunch, okay, and I do, too.
12 He is a witness --

13 MR. HARRIS: You have eaten our lunch.

14 MR. PINKERTON: Have I? I haven't thought
15 so. We can take 45 minutes, whatever you want to do, but
16 we're going to take a break for lunch.

17 MR. HARRIS: Yeah, we can take that, but I
18 won't eat.

19 MR. PINKERTON: Okay. You're not going to
20 eat. The witness needs some nourishment and we do, okay,
21 and then we're going to have to have at least an hour or
22 hour and 15 minutes for our examination.

23 MR. WILSON: Okay. So your examination
24 needs to begin at 2:00 to be safe, is that fair to say?

25 MR. PINKERTON: Yes.

1 MR. WILSON: You need to get out the door
2 at 3:30 sharp.

3 THE WITNESS: Yes.

4 MR. WILSON: And so I'm cutting you 15
5 minutes more than you say you need, which is only fair as
6 piggy as I've been.

7 MR. PINKERTON: Yeah, I agree with that.

8 MR. WILSON: And --

9 MR. PINKERTON: So we -- we're going to get
10 back here at 1:15, 45 minutes.

11 MR. WILSON: Okay. And that gives me,
12 what, 45 minutes to get through 3,000 documents. I think
13 I can do it.

14 MR. PINKERTON: I know you can.

15 MR. WILSON: Are we all promising we'll be
16 back in 45 minutes?

17 VIDEOGRAPHER: We're off the record at
18 12:29.

19 (Lunch recess)

20 VIDEOGRAPHER: We're on the record at 1:24.

21 Q. (By Mr. Wilson) Hi, Mr. Bird, we're back from
22 lunch.

23 A. I hope you enjoyed it.

24 Q. I did. Did you?

25 A. Yes.

1 Q. Good. I would like to show you a letter dated
2 June 12th, 1995, that I'm going to ask the court reporter
3 to mark --

4 (Deposition Exhibit 28 marked)

5 Q. (By Mr. Wilson) Mr. Bird, the court reporter
6 has marked this as Bird Exhibit 28 and the Bates numbers
7 are PRI00637 through 642. Do you recognize this
8 document?

9 A. Yes, I do.

10 Q. Is it a letter to you from Jerry Williamson?

11 A. Yes.

12 Q. And do you recall receiving it?

13 A. Yes, I do.

14 Q. Is this letter in response to the May 12th, 1995
15 letter that we marked as Bird Exhibit 26 earlier?

16 A. Yes, it is.

17 Q. So this is more negotiations; is that correct?

18 A. Yes.

19 Q. Do you see that this exhibit is -- it's really
20 two letters, isn't it? We've got a June 12th, 1995 cover
21 letter, and then it attaches another June 12th letter?

22 A. Yes.

23 Q. And that second June 12th letter appears to
24 again attach that -- well, what is now explicitly
25 referred to as an exclusivity agreement. Do you see

1 that?

2 MR. PINKERTON: Object to the form.

3 THE WITNESS: Okay. I see that.

4 Q. (By Mr. Wilson) Okay. Well, let's look at the
5 first of these letters that are in this exhibit here,
6 this first page, and he says that in the second paragraph
7 he has just recently had a chance to visit with our folks
8 to get their input on this transaction.

9 Did he just write you this letter or did
10 you have a conversation around this letter? Do you
11 recall?

12 A. I believe he wrote me the letter.

13 Q. Okay. But you understood that he had gotten
14 some folks together before he responded to you; is that
15 your understanding of that paragraph?

16 A. That's what he said.

17 Q. Okay. And based on the people that you had been
18 interacting with at the company would you expect them to
19 have been some of the folks that are copied down there at
20 the bottom of this letter?

21 MR. PINKERTON: Object to the form. Asking
22 for speculation.

23 Q. (By Mr. Wilson) That's exactly what I'm asking
24 for. Is that your experience?

25 MR. PINKERTON: Object to the form. Asks

1 for speculation.

2 THE WITNESS: I can't comment on that
3 because I don't know.

4 Q. (By Mr. Wilson) Looking at the second page of
5 this exhibit. Do you see the paragraph that's numbered
6 1C?

7 A. Uh-huh.

8 Q. And he's talking about what there?

9 MR. PINKERTON: Objection to the form. The
10 document will speak for itself.

11 Q. (By Mr. Wilson) What was your understanding of
12 the communication that you received --

13 MR. PINKERTON: Object to the form.

14 Q. -- with regard to that paragraph?

15 MR. PINKERTON: Object to form. Lack of
16 foundation.

17 Q. (By Mr. Wilson) Did you receive this document?

18 A. Uh-huh.

19 Q. Did you read it?

20 A. Uh-huh.

21 Q. Okay. I want to know what you thought he was
22 saying to you here, because there is another letter where
23 you respond to it and we'll look at that. I want to know
24 what your thought was here when you read this.

25 MR. PINKERTON: I'm going to object to your

1 last question.

2 Q. (By Mr. Wilson) What was your thought when you
3 read this paragraph?

4 A. I don't remember what my thought was when I read
5 it.

6 Q. Okay. What is your thought now when you read
7 it?

8 MR. PINKERTON: Take some time to read it,
9 please.

10 Q. (By Mr. Wilson) Mr. Bird, have you read the
11 paragraph?

12 A. Uh-huh.

13 Q. What is he addressing in that paragraph?

14 A. I think he's addressing the fact that we had put
15 in a coater, what we called a short arm coater on the
16 seven-color machine.

17 Q. Anything else? Isn't he talking about what's to
18 be paid for and what is?

19 A. Oh, yes.

20 Q. Things are underlined, final design, no charge?

21 A. Right.

22 Q. Okay. So I mean, I read that and I want to know
23 if you read it differently. I read that to say that
24 there was an experimental model installed according to
25 him that he says is not involved in the transaction, and

1 then he believes that there is an agreement for a first
2 final design, one to be installed, and that that one is
3 to be at no charge; am I correct so far?

4 A. That's how I would read that.

5 Q. And he expects that one at no charge to be
6 installed mid August, 1995; is that correct?

7 A. That's the way I read that.

8 Q. Okay. And then there's a second final design
9 unit that he expects to be installed at half list price;
10 is that correct?

11 A. Correct.

12 Q. As soon as possible, right?

13 A. Right.

14 Q. And then at the end of this document he attaches
15 an exclusivity agreement at PRI00641 to 642?

16 MR. PINKERTON: Object to the form. It's a
17 document entitled exclusivity agreement.

18 Q. (By Mr. Wilson) All right. Will you accept
19 that that's a document entitled exclusivity agreement?

20 A. Yes.

21 Q. Last two pages of this exhibit; is that right?

22 A. Yes.

23 Q. And here we're still talking about outlining the
24 terms of an agreement dealing with exclusive rights; is
25 that correct?

1 A. Correct.

2 Q. And do you recall that you were still
3 negotiating this with Williamson in June of '95?

4 A. I recall.

5 Q. Okay. Thank you.

6 (Deposition Exhibit 29 marked)

7 Q. (By Mr. Wilson) You have Bird Exhibit 29 in
8 front of you, Mr. Bird?

9 A. Uh-huh.

10 Q. And is this a letter that you wrote?

11 A. Yes, sort of, yes.

12 Q. Sort of? You want to clarify?

13 A. Well, you'll see that it has my son's initials
14 there. So did I write it, probably, but he has signed it
15 for me, too.

16 Q. Okay. Do you take issue with the contents of
17 this letter? Are there any misrepresentations there that
18 you can see?

19 A. No.

20 Q. Okay. Do you recognize that to be your son's
21 handwriting?

22 A. Yes, I do.

23 Q. And we're talking about where it says sort of
24 John, WB?

25 A. Yes, and the WB is Warren Bird.

1 Q. Right. And does that document refer to this
2 series of -- well, this ongoing negotiation and he says
3 reference your letter of June 12th, do you see that?

4 A. Yes, I do.

5 Q. Does that refer back to the June 12th letter we
6 just looked at, you believe?

7 A. Yes, I believe so.

8 Q. And let's mark another exhibit here, if we may,
9 please.

10 (Deposition Exhibit 30 marked)

11 Q. (By Mr. Wilson) Mr. Bird, the court reporter
12 has handed you Bird Exhibit Number 30. Do you recognize
13 this as an August 11th, 1995 letter?

14 A. I do.

15 Q. This is addressed to you?

16 A. It is.

17 Q. And who signed it?

18 A. Jerry Williamson.

19 Q. And you see on the last page, the signature
20 page, there is also some handwriting of someone else's?

21 A. Yes.

22 Q. Do you recognize that handwriting?

23 A. Yes, I do.

24 Q. Whose is that?

25 A. Me.

1 Q. And would you explain to me what you were doing
2 there?

3 A. We were -- I would assume what it appears to be
4 is calculating the cost and man hours that would have to
5 go into the project.

6 Q. And when you say the project, give me an idea of
7 what kind of scope you are talking about. What is the
8 project?

9 A. The project of building the coater.

10 Q. Okay. Of building the first coater?

11 A. Essentially the first coater, the first
12 production coater.

13 Q. Okay.

14 A. If you like, first real coater.

15 Q. So if we refer back to this earlier letter, that
16 June 12th letter, and where he talked about, you know,
17 there was an experimental that we got and then there was
18 a first final design model that we expect to have
19 designed for free. Do you remember that?

20 A. I think that's what this is.

21 Q. That's what you're calculating?

22 A. I believe so.

23 Q. So I just want to be clear. You're figuring
24 that 177 -- I'm sorry, \$177,400 is what it costs you to
25 get them that first free coater so far?

1 A. It says here free machine plus lost profit, so
2 I'm assuming that it's the second coater where Jerry is
3 looking to get the first one free because the original
4 coater was a beta coater and was just for us to determine
5 the practicality of that coater.

6 Q. Right.

7 A. At this stage we are assuming that we're going
8 to supply a coater and now we're looking at how many man
9 hours are going to be involved and what we need to invest
10 in that.

11 Q. Oh, so this is --

12 A. To build.

13 Q. I'm still confused.

14 A. We are calculating what it's going to cost to
15 build a coater.

16 Q. Okay.

17 A. And I believe it's the first of the production
18 units.

19 Q. Is this Rendleman time, for example?

20 A. Uh-huh.

21 Q. Is that time that you think had already gone
22 into the project or is it time from this moment forward
23 that you're going to put in?

24 A. I don't know.

25 Q. Okay.

1 A. I don't honestly know. I don't recall.

2 Q. Well, I wonder if we can figure from the context
3 here. He does say -- let's see if I can find it. Well,
4 his paragraph 1C on the front of this exhibit, which
5 looks like it pairs up with that 1C that we were looking
6 at earlier, right?

7 A. Yes.

8 Q. And he says we're in agreement here.

9 A. Uh-huh.

10 Q. Now, I don't know, I haven't found any other
11 correspondence between these other than the one that I
12 showed you that says, hey, we're trying to get back to
13 you. So my guess is that you have agreed to that earlier
14 June 12th. We'll give you the first one free, kind of
15 paragraph; is that your recollection?

16 A. I think that's right.

17 Q. Okay. And so does that help you figure out what
18 this marginalia is on the back or did you already know
19 that?

20 A. I don't know that. I could only hazard a guess.
21 I mean, I wouldn't honestly recall exactly what we were
22 doing. We were either calculating the cost of what we've
23 already done, which I doubt we would have been looking
24 forward and saying what is it going to cost us, how many
25 man hours are going to be involved in building the next

1 coater.

2 Q. Do you think it would have been 1,200 hours for
3 Mr. Rendleman alone on one machine?

4 A. Yes, I do, because we -- yes, I do.

5 Q. Okay.

6 A. Because I don't believe we had any real drawings
7 at that time.

8 Q. As of August 11th, 1995?

9 A. I don't believe so.

10 Q. What did one of these machines sell for?

11 A. We hadn't sold any, so I have no idea.

12 Q. But you had made proposals, hadn't you, to some
13 folks?

14 A. Oh, yeah, we proposed 60 to \$70,000, within that
15 range.

16 Q. And was that --

17 A. Remember this is -- you're talking complete
18 engineering hours, which is development cost that you're
19 talking about here.

20 Q. Okay.

21 A. When you're talking -- Ron wasn't manufacturing
22 cost, he was engineering cost.

23 Q. Okay. And then some of these costs, are you
24 saying that -- I mean if you sold them for 65 you
25 couldn't possibly be putting 117,000 just into building

1 one, right?

2 MR. PINKERTON: Object to the form.

3 THE WITNESS: Normally not, right.

4 Q. (By Mr. Wilson) Right. So those hours that are
5 listed there that total up to \$117,000 are development
6 like you said?

7 A. That's how you would normally look at a project.

8 Q. Engineering?

9 A. Yes.

10 Q. That kind of thing?

11 A. Uh-huh.

12 Q. So you're expecting to recoup that over several
13 sales?

14 A. Yes.

15 Q. Okay. Well, then with that understanding it's
16 not far fetched to suppose that that might be the cost of
17 the project from conception through delivering the first
18 free final product?

19 A. The -- when you say the first, which one are you
20 referring to?

21 Q. The first final that was mounted interstation.

22 A. The first final that was free.

23 Q. Yeah.

24 A. Yes, I think that was -- that would probably be
25 a fair statement.

1 Q. Okay.

2 (Deposition Exhibit 31 marked)

3 Q. (By Mr. Wilson) You have Bird Exhibit 31 there;
4 is that right, Mr. Bird?

5 A. Yes, it is.

6 Q. And is that an August 21st letter?

7 A. It is.

8 Q. In 1995?

9 A. Yes.

10 Q. It's PRI00622 to 623 and that's a letter to Jim
11 Johnson from you, isn't it?

12 A. It is.

13 Q. And look at paragraphs three and four. Can you
14 explain to me what units are being discussed there?

15 A. I believe that in paragraph three, since I
16 haven't read four and five yet, but I believe in three we
17 are talking about the original beta machine.

18 Q. Is that the machine that was mounted end of
19 press?

20 A. End of press, yes, I believe so.

21 Q. Okay. And then in four are you talking about
22 what machine?

23 A. I believe we're talking about the first free
24 complete machine.

25 Q. And that one was to be mounted interstation; is

1 that correct?

2 A. That's correct.

3 Q. In fact, it says interstation coater there?

4 A. Yes, it does.

5 Q. So as of this date it looks like you expected to
6 bring it in to them or install it, I guess you'd say, the
7 middle or end of September?

8 A. Sorry. Excuse me.

9 Q. That's all right. Is that right?

10 A. I'm sorry. You'll have to ask that question
11 again.

12 Q. It seems to me. I just want to know does
13 paragraph four say that Printing Research was going to
14 install that first what we have been calling the final
15 design or final product, first free final product?

16 A. Certainly would appear that way, yes.

17 Q. And those dates, middle of September, end of
18 September, right?

19 A. Looks that way.

20 Q. So I mean, if August 21st you're talking about
21 installing it, then, you couldn't have run a test at
22 Williamson if you hadn't installed it yet, could you?

23 A. True.

24 Q. Okay. It's not a big point, we've just had some
25 confusion, I think, between the parties about when some

1 things happened?

2 A. Yes.

3 Q. So that's all we're trying to establish there.

4 Do you recall when that unit was actually
5 installed?

6 A. No.

7 Q. Would you be surprised if there was some delay
8 in getting it installed?

9 A. Not at all.

10 Q. Why is that?

11 A. I found it very difficult to keep delivery
12 schedules.

13 (Deposition Exhibit 32 marked)

14 Q. (By Mr. Wilson) Mr. Bird, we've have handed you
15 an exhibit marked 32, is it?

16 A. Correct.

17 MR. PINKERTON: Do you have another copy of
18 that?

19 MR. WILSON: I do, sorry.

20 Q. (By Mr. Wilson) It's W000633 through 640. And
21 is this a letter from you to Jerry Williamson?

22 A. Yes.

23 Q. Dated August 22nd, 1995?

24 A. Right.

25 Q. And it's yet another letter documenting your

1 negotiations; is that fair?

2 A. Yes.

3 Q. And you've attached a proposal to it as well?

4 A. Right.

5 Q. And we looked at a bunch of letters where you
6 document negotiations and meetings and you testified that
7 that's an important thing.

8 MR. PINKERTON: Objection.

9 Q. (By Mr. Wilson) Is that still your testimony?

10 MR. PINKERTON: Objection in terms of
11 recounting his testimony. It will stand.

12 Q. (By Mr. Wilson) Documenting your meetings was
13 something you normally -- it was a part of your normal
14 business practice?

15 A. It was part of my normal business practice, yes.

16 (Deposition Exhibit 33 marked)

17 Q. (By Mr. Wilson) Okay. Mr. Bird, we have handed
18 you an exhibit that's been marked Bird Exhibit 33. It's
19 PRI00157, and do you recognize that as an invoice?

20 A. I do.

21 Q. Is that a Printing Research invoice?

22 A. It is.

23 Q. Did you have any experience with the billing at
24 Printing Research?

25 A. No.

1 Q. Do you know typically when bills went out? I
2 mean, when something went out would a bill accompany it,
3 would it follow it, what was the normal practice?

4 A. With machinery it's difficult to say.

5 Q. Okay. This invoice is dated 11-30-95. Do you
6 see that up at the top?

7 A. I do.

8 Q. And you see it says date shipped 11-30-95.

9 A. Okay.

10 Q. And it refers to a couple of things that were
11 shipped, and I'm interested in the first one there. It's
12 described as a Heid 40-inch. I assume that's a
13 Heidelberg 40-inch?

14 A. Correct.

15 Q. CD, what does CD stand for?

16 A. Heidelberg CD.

17 Q. Okay. So that's a model --

18 A. Model.

19 Q. -- of the printing press?

20 And then it says EZ flexo coater slash
21 first unit LYL 6 slash C. What do you take that
22 description to be of?

23 A. The EZ interstation coater.

24 Q. And is this the so-called first final design,
25 you think?

1 A. Probably.

2 Q. Would it help your guess if you looked at the
3 unit price there and the amount charged for it?

4 A. It would help, yes.

5 Q. Why does that help you?

6 A. Well, because it's free of charge.

7 Q. Because it's free. Okay. So it looks like this
8 refers to that first free one?

9 A. Yes, it does.

10 Q. That was a final design that was mounted
11 interstation?

12 A. Yes.

13 Q. At Williamson Printing?

14 A. Williamson Printing.

15 Q. I gave you a bunch of leading questions there.
16 Your answer to all of those was yes?

17 A. Yes.

18 MR. WILSON: Are you going to object to the
19 form of that question, Counsel?

20 MR. PINKERTON: No.

21 MR. WILSON: Okay. Thank you.

22 Q. (By Mr. Wilson) So is it possible looking at
23 this that the unit was delivered as late as November?

24 A. It looks like that was probably the case.

25 Q. Probably the case?

1 A. Yes.

2 Q. Okay. Well, here's a document that adds further
3 to the confusion, but maybe you can unconfuse me.

4 (Deposition Exhibit 34 marked)

5 Q. (By Mr. Wilson) You've been handed, Mr. Bird,
6 an exhibit that's marked Number 34, it's PRI0265. Is
7 that a letter from you to Jesse Williamson?

8 A. Yes, it is.

9 Q. And what is the date of that letter?

10 A. February 8, 1996.

11 Q. I'm kind of interested in paragraph four here,
12 it says, "Upon acceptance of the EZ interstation
13 printer/coater supplied and installed at no charge, we
14 will upon your instructions start manufacture of the
15 second EZ interstation printer/coater press and position,
16 be advised at half the original list price," and then it
17 goes on.

18 Reading this letter, where do you think, or
19 from your memory, where do you believe Printing Research
20 was at this point in time, February of 1996, in terms of
21 what had been delivered to Williamson?

22 A. I would read into that that the first final --

23 Q. First final free one?

24 A. -- free one had been delivered.

25 Q. Had been delivered?

1 A. Yes.

2 Q. Okay. So it was probably on site there, and
3 when you say upon acceptance, they maybe just weren't
4 satisfied with it yet?

5 A. That's -- yes, that's true.

6 Q. Not even maybe?

7 A. Not even maybe.

8 Q. Okay. Well, why don't you tell me, what was the
9 deal? Had it been delivered and what?

10 A. It had been delivered and we had a lot of
11 problems.

12 Q. Okay.

13 A. Serious problems.

14 Q. Okay. And can you tell me about the problems,
15 sort of what was the nature of them? What was going
16 wrong?

17 A. Mechanically it didn't work.

18 Q. It didn't move into position.

19 A. It moved into position, but it didn't do what it
20 was -- what we saw represented and saw --

21 Q. And what is that?

22 A. That is to lay down a application of solution,
23 whether it be ink or whether it be coating, and that
24 would be applied in an even manner across the sheet. We
25 were never able to do that. We were never able to run

1 the machine at press speeds. The fastest we ever got up
2 to was about 5,000 sheets an hour. The press was capable
3 of 14 or 15,000 sheets an hour.

4 So clearly we couldn't match machine
5 speeds. We couldn't give product quality. Do I need to
6 go on?

7 Q. Please.

8 A. I mean, that's --

9 Q. That's the essence?

10 A. That's the essence.

11 Q. When you say you couldn't match machine speed --

12 A. Starvation problems.

13 Q. What's starvation?

14 A. Ink, not getting -- being able to pump enough
15 ink up into the reservoir.

16 Q. Which had to do with whether or not you could
17 lay it thick enough?

18 A. Whether you could apply it evenly.

19 Q. Okay.

20 A. As well as the problems with juttering, we got
21 resonance problems.

22 Q. What does that mean, it would vibrate?

23 A. Uh-huh, yes.

24 Q. Okay. And when you say you couldn't get up to
25 speed, does that mean you couldn't get to speed at all or

1 you couldn't get to speed with the desired quality?

2 A. Well --

3 Q. I mean, you can run it as fast as you want,
4 right?

5 A. You can run it as fast as you want, yeah.

6 Q. So you're really talking about a certain level
7 of quality?

8 A. Well, if you're not getting anything on the
9 sheet, you're really not achieving very much.

10 Q. Right, but was there some lower speed level at
11 which you could achieve an acceptable quality level?

12 A. Not that I was satisfied with, and I believe
13 that was true of the customer also.

14 Q. Okay. And was it true of anybody else at
15 Printing Research?

16 A. I believe so, yes.

17 Q. Who?

18 A. By many people.

19 Q. Who?

20 A. Steve Garner was very much of the same opinion.
21 I believe that Ron couldn't have been satisfied. I don't
22 know that, but I don't believe he could have been
23 satisfied.

24 Q. But did he tell you he wasn't satisfied?

25 A. Well, I know by his -- I feel by his actions

1 that he clearly couldn't have been satisfied because he
2 continued to work on that coater as much or as long as he
3 did.

4 Q. Uh-huh?

5 A. We had -- I had actually rejected the
6 corporation's calendar for the year of '96 because we
7 weren't able to ever run it with a decent quality.

8 Q. You weren't ever able to run it with decent
9 quality?

10 A. No, no, not to do the job it was designed to do.

11 Q. The EZ interstation printer/coaters that were
12 supplied to Printing Research, were they common in their
13 manufacturing? In other words, could you swap out gears
14 from one unit to the next?

15 A. You should have been able to.

16 Q. And could you?

17 A. I don't think so, but you may have been.

18 Q. Okay. But that was the intent, is that what
19 you're saying when you say you should have been able to?
20 I'm not clear.

21 A. Well, if you -- to design a coater you would
22 hope that that's what you would do.

23 Q. Why would you hope that?

24 A. Well, because it's very useful when you're doing
25 any maintenance work to be able to -- and/or you've got

1 problems, that you could interchange components.

2 Q. Sure. You don't want to have to build it from
3 scratch every time something breaks?

4 A. Right.

5 Q. Okay. We're going to mark another exhibit here.

6 (Deposition Exhibit 35 marked)

7 Q. (By Mr. Wilson) Is that a letter from Jesse
8 Williamson to you?

9 A. Yes, it is.

10 Q. This is Bird Exhibit 35. Do you recall
11 receiving this letter?

12 A. I do.

13 Q. I'm sorry?

14 A. I do.

15 Q. You do?

16 A. Yes, I do.

17 Q. And you say it with a chuckle, why is that?

18 A. It's just -- I'd rather not comment.

19 Q. All right. Well, he's talking about he thinks
20 they're not all common in manufacturing. Do you see
21 that?

22 A. Yes, I do.

23 Q. Jesse says that?

24 A. Yeah.

25 Q. And as you said, that would be a legitimate

1 concern, wouldn't it?

2 A. It would be.

3 Q. Do you recall writing back to Mr. Williamson?

4 A. I would assume I would have written back.

5 Q. Okay. We're going to mark another exhibit here.

6 (Deposition Exhibit 36 marked)

7 Q. (By Mr. Wilson) The court reporter has handed
8 you Bird Exhibit 36. Is that your response to the letter
9 shown at Bird Exhibit 35?

10 A. Uh-huh.

11 Q. And did you tell Mr. Williamson, Mr. Jesse
12 Williamson, that in fact the working or replaceable
13 components were completely interchangeable?

14 A. That's what I said.

15 Q. Do you have reason to doubt it now?

16 A. I have no comment.

17 Q. Well, has anybody told you that's not true?

18 A. I have reason to believe that it may not have
19 been true.

20 Q. Did you know at the time or did you believe at
21 the time that it was not true?

22 A. I believe that I was mislead at the time.

23 Q. Who mislead you?

24 A. I would assume that our engineering staff,
25 whoever that may be.

1 Q. Well, who would you have gone to at this time to
2 ask?

3 A. That could have been a variety of people at that
4 time.

5 Q. Well, would you have copied that engineer if
6 you'd talked to him about this?

7 A. No, not necessarily.

8 Q. Looks like you only copied Mr. Garner.

9 A. Correct.

10 Q. What was Mr. Garner's relationship to this
11 problem?

12 A. He at that time was the president, I believe, of
13 the company, by 1996, and he -- I would have been
14 reporting directly to him at that time.

15 MR. WILSON: Okay. I think those are all
16 of the documents I have. I just have a couple more
17 questions I need to field. Is that okay. I know I'm
18 getting into your time a little.

19 MR. PINKERTON: Til five minutes after.

20 MR. WILSON: Sure. If you'll extend me
21 that courtesy, I would appreciate it.

22 Q. (By Mr. Wilson) I think last time we were here
23 you talked about you didn't really believe you were an
24 inventor on the May application. Do you recall that?

25 A. Correct, I do.

1 Q. And I don't want to mischaracterize your
2 testimony, but I think you said that you felt sort of
3 forced to sign the thing?

4 A. Uh-huh.

5 Q. Is that fair?

6 A. Yes, that is fair.

7 Q. How -- what was said to you to force you to do
8 that, if anything?

9 A. I think it's implicit when you're in a
10 corporation as small as Printing Research when the owner
11 of the corporation says that I want you to be part of
12 this patent and we need you to go on here, that it's very
13 difficult to say no.

14 Q. Are you referring to Howard DeMoore when you say
15 the owner?

16 A. I am referring to Howard DeMoore.

17 Q. Okay. Did you protest to him at all --

18 A. No.

19 Q. -- and tell him you didn't think you were an
20 inventor?

21 A. No, I did not.

22 Q. Okay. So is that something that was -- I'm
23 trying to understand where you're coming from here. Is
24 that a pressure that you sort of felt internally based on
25 your position?

1 A. Yes.

2 Q. He didn't say anything to you --

3 A. No, he did not.

4 Q. -- like sign or you're fired?

5 A. No, he did not.

6 Q. Did he replace any, what would the word be,
7 explicit pressure on you? Do you understand what I mean,
8 overt pressure?

9 A. No.

10 Q. Would there be an motive that you could think of
11 for Howard DeMoore to force you to sign something or to
12 pressure you?

13 A. No.

14 Q. Now, you'll recall we had a declaration that we
15 looked at, a supplemental declaration that was Exhibit 3
16 that had that list of meetings --

17 A. Uh-huh.

18 Q. -- you know the August through May meetings that
19 you had, and I understand that you've also testified
20 today that you checked up with Mr. Rendleman frequently
21 about the progress he was making on this 363 device, and
22 I'm trying to square that testimony with paragraph three
23 of your first declaration that you did, Exhibit 2. I'm
24 sorry, I'm looking for paragraph 13. Did I say that?

25 A. What exhibit number?

1 Q. It's Exhibit 2.

2 A. Okay. Got that.

3 Q. Paragraph 13.

4 MR. PINKERTON: Which declaration?

5 MR. WILSON: The first declaration of John
6 W. Bird.

7 MR. PINKERTON: Which is what exhibit?
8 What exhibit is it?

9 MR. WILSON: It's Exhibit 2, Bird
10 Exhibit 2.

11 MR. PINKERTON: Has he testified about it
12 here today?

13 MR. WILSON: You've got it. You've got the
14 right one. Not page, paragraph 13.

15 THE WITNESS: Okay. Sorry.

16 MR. PINKERTON: Is it here?

17 MR. WILSON: I gave you one earlier, do you
18 need another one?

19 MR. PINKERTON: Bird 2.

20 MR. WILSON: Here, I've got another one.

21 MR. PINKERTON: Here, wait a minute. Maybe
22 it's right here.

23 MR. WILSON: It's the big first one.
24 You've got it over there. It's folded over there. You
25 got it.

1 MR. PINKERTON: Paragraph what?

2 MR. WILSON: 13.

3 THE WITNESS: You wanted me to read this?

4 Q. (By Mr. Wilson) Just give it a quick read, if
5 you would. And look in particular at the last two
6 sentences, "The short arm device was never intended to
7 perform an interstation flexographic coater and could not
8 have," and then it goes on a little bit and it says, "In
9 December of 1994 PRI had no commitment from WPC to order
10 such devices, there was no established market for an
11 interstation," and then it says, "And no one at PRI
12 appreciated, much less knew, of the details of the 363
13 inventive process outside of the disclosure made to
14 Baker."

15 A. Outside of the disclosure made to Baker, yes.
16 So what's your question.

17 Q. The disclosure made to Baker was in June?

18 A. Uh-huh.

19 Q. And this seems to indicate that that's all that
20 was known about it, the disclosure made to Baker; is that
21 true?

22 A. Well, the disclosure made to Baker was of the
23 process.

24 Q. Right, but then there was a whole series of
25 meetings in your other statement here that you had where

1 more details of the process were explained, and you're
2 someone at PRI?

3 A. Yes, sure. Well, okay.

4 Q. So that statement -- is that statement not true
5 now?

6 A. It's not true now, right.

7 Q. I think I've already asked you this question,
8 but let me ask you to make sure. Did you ever discuss
9 the 363 process with Dennis Griggs?

10 A. I don't believe so. I may have, but I'm not
11 sure. I can't recall.

12 MR. WILSON: I pass the witness. Thank
13 you, Mr. Bird.

14 THE WITNESS: Thank you.

15 EXAMINATION

16 BY MR. PINKERTON:

17 Q. Mr. Bird, after the first production model EZ
18 interstation was installed at Williamson, regardless of
19 the date, when that unit was put into operation at
20 Williamson, was Mr. Rendleman present, to the best of
21 your knowledge?

22 A. Yes.

23 Q. Were any other people there from Printing
24 Research?

25 A. Yes.

1 Q. And why would those people have been present at
2 Williamson Printing Corporation with respect to the
3 running or operation of that EZ interstation unit?

4 A. Since Ron was -- the engineering part of the
5 design was Ron's brain child, it was very much necessary
6 for Ron to be there to -- with the operation of that
7 unit. So we had to have Ron there, not that we didn't
8 want to have Ron there, but it was vitally necessary to
9 have Ron there.

10 It was also necessary to have Terry Britton
11 there when the install went on because Terry was the only
12 one in the corporation that was familiar with the art of
13 coating within Printing Research. When I say that in a
14 practical nature, so there were -- definitely those two
15 people involved. Other than that, there was myself, I
16 know that there was Steve Garner. I know we ran tests.
17 We ran tests until quite late at night on several
18 occasions.

19 Q. Would they have been there to address any of the
20 problems that you have mentioned?

21 A. Yes, oh, yes.

22 Q. And what -- could you explain what you meant by
23 that?

24 A. Problems that we had were very similar to the
25 ones that we got on the production models and in my

1 opinion were never ever resolved, but they were ones of
2 what we call streaking issues with the coating. At that
3 time we were just putting coatings down. We were having
4 serious chatter problems with the coater.

5 And in fact, to get it on and off the
6 machine into an operating mode, you actually had to lean
7 on the end of the big pendulum arm to create enough lift
8 to get -- or leverage to swing it in to the on-impression
9 mode and back off of the impression mode. So there were
10 a lot of -- which is understood, because is it was a beta
11 model and you would expect to have problems at the
12 beginning.

13 Q. You kind of switched gears on me a little bit,
14 so to speak. We were talking about gears versus manual.
15 I had initially asked you about the production model,
16 first production model.

17 A. Oh, sorry.

18 Q. Whenever it was installed.

19 A. Okay.

20 Q. And Mr. Rendleman or Mr. Britton being there?

21 A. They were there, exactly the same format
22 essentially. The difference now being getting it able to
23 perform at any reasonable production speed and at the
24 same time to try and produce something that was
25 commercially saleable.

1 Q. And did they, in fact, work to try to make it
2 produce?

3 A. Yes, they did, very hard.

4 Q. And were they successful in doing so?

5 A. No, in my opinion, no.

6 Q. And that job that you talked about, the calendar
7 for Printing Research --

8 A. Yes.

9 Q. -- was that job ultimately accepted or rejected?

10 A. It was rejected by me.

11 Q. And that was a -- what size project was that?

12 A. It was very big. We had 20,000 sheets, so it
13 wasn't something that we took lightly. It was 20,000
14 sheets that were produced that were metallic gold. We
15 were trying to show off the process and what we were able
16 to achieve.

17 Q. And what was it that caused the problem and that
18 caused the sheets to be rejected, the calendar to be
19 rejected?

20 A. Well, the gold application was streaked and
21 every sheet was covered in streaks.

22 Q. And was that attributable to some particular
23 component on the press?

24 A. I'm -- not the press itself. It was our coater
25 that was clearly the culprit.

1 Q. The EZ interstation coater?

2 A. EZ interstation coater.

3 Q. Where was it mounted on the press for that
4 particular unit, if you recall?

5 A. I believe it was on the first unit.

6 Q. Okay. Do you recall that a patent application
7 was filed in May of 1995 directed to the cantilevered
8 Ferris wheel device? Do you recall that?

9 A. Yes.

10 Q. And prior to the filing of that application
11 would you have had opportunities to discuss that
12 application with the patent attorney, Mr. Griggs?

13 A. Yes.

14 Q. And did you provide certain information with
15 respect to that application in regard --

16 A. Yes.

17 Q. Okay. Yesterday I asked you to review that
18 application, didn't I?

19 A. Yes.

20 Q. And I only have one copy of this, but I asked
21 you to review the application and mark in there
22 information relating to the details of the printing
23 process; is that correct?

24 A. Correct.

25 Q. Okay. And did you do that?

1 A. Yes.

2 Q. Okay. With respect to that information that
3 you've marked in the application relating to the process,
4 who provided you that information?

5 A. Williamson Printing.

6 Q. And who at Williamson Printing?

7 A. Jesse Williamson and Bill Davis.

8 Q. Was that in connection with the various meetings
9 that you had with them and you've discussed throughout
10 this deposition and your declaration?

11 A. Yes.

12 Q. And would you have been provided that
13 information in the various meetings set forth in
14 supplemental declaration of John Bird, Bird Exhibit 3,
15 which are listed in detail here as item number two?

16 A. Yes.

17 Q. Okay. Let me hand you --

18 A. I still haven't got to three.

19 Q. Excuse me?

20 A. Still haven't got to three.

21 Q. I'm sorry.

22 A. Okay.

23 Q. So after looking at that is your answer yes?

24 A. Yes.

25 Q. Okay. Let me hand you now -- we'll mark this as

1 Bird -- Bird 37?

2 THE WITNESS: I think we have a 37.

3 MR. WILSON: I'm sorry. I've lost track of
4 what we're looking at here.

5 MR. PINKERTON: We're going to mark an
6 exhibit number. It's 37. Bird 37 is the next one. I'm
7 pretty sure.

8 (Deposition Exhibit 37 marked)

9 MR. WILSON: In terms of his
10 representations about what came out of the 363, I'm going
11 to object that he's not a patent expert, and that he
12 doesn't have any basis to testify and to what the claims
13 in the 363 are or whether they are in the May 4th patent
14 application.

15 MR. PINKERTON: I don't think I had a
16 question pending. Mr. Bird, take a look, if you would,
17 please, sir, at what we've marked as -- has been marked
18 as Bird Exhibit 37.

19 MR. HARRIS: It's okay if -- do we have a
20 copy?

21 MR. WILSON: No, we don't have a copy. Can
22 we have a copy?

23 MR. HARRIS: It's okay if you don't give us
24 copies, but tell us what things are at least.

25 MR. PINKERTON: I just asked him to take a

1 look at -- we'll do it. He just testified about it. And
2 we'll make a copy of this. It's the only one I have
3 because he only marked one.

4 MR. WILSON: Well, first you told me there
5 was no question and then you told me that he testified on
6 it. So is there a question that elicited his testimony
7 on it?

8 MR. PINKERTON: Following your statement
9 and my telling you that there was no question, I then
10 asked a question. I said has Exhibit 37 been placed in
11 front of you.

12 MR. WILSON: So that's the question that
13 you're referring to?

14 MR. PINKERTON: Yes.

15 Q. (By Mr. Pinkerton) Can you answer that question
16 again, please, sir?

17 A. Yes.

18 Q. You have it. Identify the document for us,
19 please, sir.

20 A. It is the retractable inking coating apparatus
21 having first movement between printing units.

22 Q. Okay. If I could see that, please, sir.

23 And for the record this is -- has
24 production numbers W00134 -- excuse me, 001349 through
25 001412. A copy of the patent application, serial number

1 08435798 and the document number W001352 has on it
2 attorney docket number B6012.

3 MR. PINKERTON: And I'll hand that to
4 counsel for plaintiff since we don't have another copy of
5 it.

6 (Discussion off the record)

7 Q. (By Mr. Pinkerton) Mr. Bird, let me show you
8 again Exhibit 37. Did I ask you to review the text of
9 that patent, the specification of it?

10 A. Yes.

11 Q. And did I ask you to mark in yellow portions of
12 that specification, which are process details that were
13 provided to you by Williamson Printing?

14 A. Yes.

15 Q. And is that what you did?

16 A. Yes.

17 Q. Can you tell us generally with respect to the
18 application what is in the application Exhibit 37 that
19 originated from Williamson Printing as a general matter?

20 A. As a general matter it was the, if you like, the
21 flip side of WIMS improvement concept.

22 MR. WILSON: I'm going to object again that
23 he's not qualified to interpret the 363 patent, and if
24 that answer is intended to go to the 363 patent or his
25 understanding of it, then I object.

1 Q. (By Mr. Pinkerton) What was the concept that
2 you're talking about, the improved concept?

3 A. Improved concept was bringing in the flexo
4 process to apply the metallics, etcetera.

5 Q. And where was the flexo process going to be
6 used?

7 A. It would be upstream in the printing process.

8 Q. And how would --

9 MR. WILSON: Object to form.

10 Q. (By Mr. Pinkerton) And how would the flexo
11 printing actually be accomplished as part of the concept?

12 MR. WILSON: Object to form.

13 THE WITNESS: It would have to be applied
14 from a flexo applicator of some description.

15 Q. (By Mr. Pinkerton) Okay. And what was the
16 description from a general manner?

17 A. In a general --

18 MR. WILSON: Object to form.

19 THE WITNESS: -- it would be an anilox roll
20 with some sort of doctoring device, metering device,
21 which is the general form of a flexo device and would
22 have some means of being able to be retracted on and off
23 impression in and out of the way when not in use and then
24 when in use would be able to apply at the blanket
25 cylinder.

1 Q. (By Mr. Pinkerton) That concept as you've
2 described, where did that concept come from?

3 A. Williamson Printing.

4 Q. And who in particular?

5 A. Jesse Williamson in particular.

6 Q. And anyone else?

7 A. Bill Davis.

8 MR. WILSON: Object. Leading.

9 Q. (By Mr. Pinkerton) Okay. The first that you
10 heard of that concept was when?

11 A. That was directly after the meeting in Atlanta
12 with Steve Baker and Jesse Williamson and Bill Davis,
13 et al, to view our UV systems and our high velocity hot
14 air dryer. That was also clear why they were so
15 interested, they being Williamson Printing, in our high
16 velocity hot air drying system.

17 MR. WILSON: Objection. No foundation.
18 Hearsay.

19 Q. (By Mr. Pinkerton) Let me pull the -- you don't
20 have to hold that any more. Thank you.

21 Now, that meeting -- I think you testified
22 that it was of interest to you, the meeting was of
23 interest to you?

24 A. Very much so.

25 Q. And why was --

1 MR. WILSON: Objection to form.

2 Q. (By Mr. Pinkerton) And why was the meeting of
3 interest to you?

4 A. Because we were in -- already had started
5 discussions, and I think we discussed it earlier, that I
6 think we had started almost synonymous with the settling
7 of the previous court case where Printing Research had
8 sued Williamson Printing, and we knew that as part of
9 that settlement that there was a transaction business
10 that was agreed to be performed.

11 I had started working on my relationship
12 with Williamson Printing almost as soon as that case had
13 been settled and was working up a relationship with the
14 Williamson Printing Corporation to that end.

15 Q. And approximately when did you start rebuilding
16 that relationship?

17 A. Directly after the settlement of the case.

18 Q. And approximately when in time was that?

19 A. I think it was the end of '93.

20 Q. End of '93. And in terms of building a
21 relationship what did you do?

22 A. I would have made several presentations to Bill
23 Davis, and then as clearly our product line was becoming
24 interesting to Bill Davis, Bill Davis had introduced me
25 to Jesse, and I then started doing -- getting involved in

1 presentations towards Jesse.

2 Then I was informed by Bill that -- Bill
3 Davis, that they were looking to renew their presses and
4 that they were going to change the whole fleet of presses
5 that they had, which at that time was four and they were
6 looking to put in another seven machines, which is almost
7 unheard of in the industry. That was very exiting to me
8 and to Printing Research because of the potential
9 business that we could now go get.

10 Q. And what was that potential business that you
11 hoped to get?

12 A. Drying.

13 Q. Drying equipment?

14 A. Specifically drying equipment. We were -- we
15 presented to them UV drying systems, mixed UV systems
16 that was a specialty machine that Heidelberg had just
17 announced in the market place, plus regular water-based
18 drying equipment, plus -- which we had, which was very
19 much a novelty was -- which we had a patent on, which was
20 the high-velocity hot air drying system.

21 Q. Now, the meeting in Atlanta that you testified
22 about in June of '94, did that relate to some of the
23 drying equipment?

24 A. Yes, it was a culmination of a number of those
25 presentations. As I said previously, it became evident

1 to me the amount of interest that was placed on -- placed
2 by Williamson Printing on the HV system was because they
3 recognized they had their process, their concept in mind,
4 and the high velocity hot air was clearly of great
5 interest.

6 We -- they needed to see it in operation.
7 They wanted to see us -- go to a site where we had it.
8 It happened that the only site that we had that was
9 working at that time in a production environment that we
10 could show them was in Noonan, Georgia, at James River.

11 That happened to be -- work out very well
12 for us, because we also had our only major UV site in
13 Atlanta, Georgia, and Noonan is maybe 30 or 40 miles
14 outside of Atlanta, so it made good sense to visit
15 Atlanta and then go on to visit Cadmus as it became
16 American Graphics and then go out to Noonan, Georgia, to
17 look at the HV -- the high-velocity hot air drying
18 system.

19 It happened that we also had a plate
20 blanket coater on site in the James River plant that they
21 went and visited.

22 Q. Okay. Were you involved in --

23 MR. WILSON: I object to the narrative
24 response as nonresponsive.

25 Q. (By Mr. Pinkerton) Were you involved in

1 discussions about that trip to Atlanta before it actually
2 happened?

3 A. Yes.

4 Q. You've testified that you went to Italy the week
5 before?

6 A. Yes.

7 Q. Had you not gone to Italy would you have --

8 A. Oh, absolutely, yes.

9 MR. WILSON: Objection. Speculation.

10 Q. (By Mr. Pinkerton) Let me rephrase the
11 question.

12 MR. WILSON: Assumes facts not in evidence.

13 Q. (By Mr. Pinkerton) Had you not gone to Italy,
14 would you have attended the meeting?

15 A. Absolutely, yes.

16 MR. WILSON: Leading. Objection.

17 Q. (By Mr. Pinkerton) And why would you have
18 attended the meeting had you not been at --

19 A. Because I was leading up all of the negotiations
20 and projects related to Williamson Printing.

21 Q. You didn't get to go to the meeting because you
22 were in Atlanta -- I mean, excuse me, you were in Italy,
23 right?

24 A. Right.

25 Q. Now, there has been some discussion here about

1 the date that Mr. Baker returned to Dallas, okay. And
2 you had a conversation with him and then a conversation
3 with Mr. DeMoore?

4 A. Right.

5 Q. When you initially had a declaration where there
6 was some discussion about that, that time frame, okay, at
7 that time had you reviewed your Daytimers?

8 MR. WILSON: Objection. Vague. What
9 declaration are we talking about?

10 MR. PINKERTON: First declaration.

11 MR. WILSON: Okay. Let's identify by
12 exhibit, please. Exhibit 2.

13 MR. PINKERTON: Exhibit 2.

14 MR. WILSON: Yes, there it is on my list,
15 declaration of John Bird.

16 Q. (By Mr. Pinkerton) So do you have that in front
17 of you, Mr. Bird?

18 A. I don't know.

19 Q. Declaration of John Bird, Bird Exhibit 2?

20 A. Yes.

21 Q. And at that time, that was dated December 11,
22 1999, right?

23 A. Yes.

24 Q. At the time of that declaration had you had the
25 opportunity to review your Daytimers?

1 A. No.

2 Q. Subsequently were you asked to take a look at
3 your Daytimers and concentrate and focus your attention
4 in terms of what actually happened here in connection
5 with this trip to Atlanta as to when the trip occurred
6 and when you had a meeting with Mr. Baker when he
7 returned from Atlanta?

8 A. Yes.

9 Q. Okay. And was that done prior to the time that
10 you executed your second supplemental declaration, which
11 is Bird 22, and you might just take a look at that?

12 A. Yes.

13 Q. Okay. So as of the time of the second
14 supplemental declaration you had reviewed your Daytimer
15 for June; is that correct?

16 A. Correct.

17 Q. And you also had been provided by the documents
18 that are attached as Exhibit A; is that correct?

19 A. Correct.

20 Q. And those were some receipts of Mr. Jesse
21 Williamson relating to a trip to Atlanta in June of 1994;
22 is that right?

23 MR. WILSON: Objection. Foundation.
24 Hearsay. No personal knowledge.

25 MR. HARRIS: And leading.

1 MR. WILSON: And leading.

2 Q. (By Mr. Pinkerton) Are those the exhibits that
3 are attached?

4 A. Yes.

5 Q. Okay. And what's your understanding of those
6 exhibits that are attached as Exhibit A?

7 MR. WILSON: Same objection except the
8 leading. No foundation. No personal knowledge.
9 Hearsay.

10 Q. (By Mr. Pinkerton) You can testify. What is
11 your understanding of what those -- you have already
12 testified about them, but do it again?

13 A. They are receipts, expense receipts from Jesse
14 Williamson when he was in Atlanta and Bill Davis'
15 expenses, and they're all related to that time and place.

16 Q. June trip to Atlanta?

17 A. Yes.

18 MR. PINKERTON: Let me mark as Bird
19 Exhibit 38 the next exhibit.

20 (Deposition Exhibit 38 marked)

21 THE WITNESS: It's the June Daytimer again.

22 MR. PINKERTON: Huh?

23 THE WITNESS: It's that June Daytimer.
24 We've got more copies of that Daytimer than anything.

25 MR. WILSON: I'm going to object that the

1 exhibit is incomplete. There's days missing.

2 MR. PINKERTON: Oh, really.

3 Q. (By Mr. Pinkerton) Okay. Take a look, if you
4 would, please, Mr. Bird, and identify the Daytimer that
5 you've got in front of you there. What is the exhibit?

6 A. It's Exhibit 38.

7 Q. 38. Identify that for us, please, sir.

8 A. It is my Daytimer dated June of '94.

9 MR. WILSON: I'm going to object unless he
10 compares it because I know there is days missing here.

11 MR. PINKERTON: If you'd like to compare it
12 later on, we can do that.

13 THE WITNESS: We have the actual Daytimer,
14 if that helps.

15 MR. PINKERTON: We can do that.

16 MR. HARRIS: Is that it?

17 THE WITNESS: That's it.

18 MR. PINKERTON: Mark that as Exhibit 38A,
19 please.

20 THE WITNESS: This?

21 MR. PINKERTON: Yeah. The original. Is
22 that okay with you.

23 THE WITNESS: That's fine.

24 MR. PINKERTON: Because we want to have
25 every bit of information here.

1 (Deposition Exhibit 38A marked)

2 Q. (By Mr. Pinkerton) All right. So prior to
3 executing the second supplemental declaration, Bird
4 Exhibit 22, you had the opportunity to review your June
5 Daytimer; is that correct?

6 A. Yes, I did.

7 Q. Mr. Bird, the Daytimer you have there,
8 June 22 -- excuse me, for June of 1994, is that a
9 document that you kept and used in the ordinary course of
10 business?

11 A. Yes.

12 Q. While you were at Printing Research?

13 A. Still do.

14 Q. And you've maintained it since that time?

15 A. Yes.

16 Q. You use that in connection with your business
17 for Printing Research?

18 A. Yes.

19 Q. In fact, if you look at Bird Exhibit 23, it's
20 got some of the pages from that June Daytimer, which has
21 been marked as Exhibit 38; is that correct?

22 A. That's correct.

23 Q. It's got the summary page, right?

24 A. Correct.

25 Q. And looks like a scribbly page?

1 A. Yes.

2 Q. Notes and memos?

3 A. Right.

4 Q. It's got a page for June 12; is that right?

5 A. Yes.

6 Q. Okay. Now, what was June 12 of that week?

7 A. June 12 of that week was the Sunday.

8 Q. Was Sunday. And --

9 A. Hence my comment earlier that that was not
10 possible for me to have had a meeting on June 12th.

11 Q. Okay. Now, so you had reviewed your Daytimer,
12 you had reviewed the attachments that are Exhibit A
13 before you signed the second supplemental declaration of
14 John Bird; is that right?

15 A. Right.

16 Q. And having reviewed those items, did that
17 refresh your recollection in terms of when the trip to
18 Atlanta had occurred?

19 A. Yes.

20 Q. And based on that, the trip to Atlanta occurred
21 in what month of 1994?

22 A. I believe clearly June of '94.

23 Q. Okay. And as you have testified once you came
24 back from Italy when did your meeting with Mr. Baker
25 occur?

1 A. It would have occurred on a Tuesday, Tuesday the
2 14th.

3 Q. You have also given another date of June 15th,
4 which is a Wednesday; is that correct?

5 A. Correct.

6 Q. Okay. Take a look at your declaration, which is
7 Bird Exhibit 22.

8 A. All right.

9 Q. And paragraph four talks -- paragraph four says
10 what in regard to the third sentence, says Baker --
11 Baker, I recall -- what does it say?

12 A. "Baker, I recall, returned on the following
13 Wednesday the 15th, possibly Tuesday the 14th, Baker came
14 into my office. I recall it was in the morning the day
15 following his return and was quite enthusiastic about an
16 additional sales opportunity PRI had interstation
17 retractable coater equipment with an anilox roller in
18 accordance with Davis/Williamson suggestions."

19 Q. Okay. Now, if Mr. Baker returned on the 14th,
20 then when would the meeting have occurred with Mr. Baker?

21 A. On the 15th.

22 Q. And that's what you're saying would have
23 occurred the morning of the following day?

24 A. Yes.

25 Q. Okay. Based on the Daytimer --

1 A. Uh-huh.

2 Q. -- the exhibits attached as Exhibit A to your
3 supplemental declaration, reviewing your declaration,
4 when do you believe that the meeting with Mr. Baker
5 actually took place?

6 A. June the 15th.

7 Q. And the morning of the 15th?

8 A. Morning of the 15th.

9 Q. Okay. And the meeting that you testified about
10 earlier that you had with -- or you said that was a
11 meeting you had with Mr. Baker and then Mr. DeMoore came
12 into that meeting; is that correct?

13 A. Yes.

14 Q. And that would have happened on what day?

15 A. June 15th.

16 Q. Okay. Now, take a look at Bird Exhibit 21,
17 reissue applicants first submissions. That's the first
18 document that Mr. Wilson asked you about.

19 MR. WILSON: It's the big long one.

20 THE WITNESS: That helps. Thank you.

21 Q. (By Mr. Pinkerton) Now, you didn't prepare that
22 document, did you?

23 A. Excuse me?

24 Q. You didn't prepare that document, did you?

25 A. No.

1 Q. In fact, if you look at page 18 --

2 A. Yes.

3 Q. -- it was signed by who?

4 A. Bob Falk.

5 Q. Mr. Falk. So would it be fair to say that based
6 on review of the signature that it was prepared by
7 Mr. Falk, to the best of your knowledge?

8 A. Yes.

9 Q. Okay. Now, you referred to page nine, looks
10 like the first full paragraph.

11 A. Page nine?

12 Q. Yes, page nine. That first full paragraph there
13 you were asked about that and you said that that was not
14 correct. What is it that's incorrect about that second
15 paragraph, Mr. Bird?

16 A. Which one are we talking about?

17 Q. The paragraph that says Bird stated in his
18 second supplemental deposition, okay, Exhibit 2 hereto --

19 A. Okay. Got you.

20 Q. -- that it was June 12 and that DeMoore was told
21 the same day.

22 A. Right. That's incorrect.

23 Q. What is incorrect about that?

24 A. The date is incorrect. It should be June 15th.

25 Q. Should be June 15th.

1 What do you believe about that there -- was
2 that error -- what type of error is that?

3 A. I think that's a typographical error, I think.

4 Q. You certainly don't think that Mr. Falk had any
5 intention to mislead anybody, do you?

6 A. No.

7 Q. Just a typo?

8 A. Typo.

9 Q. You clearly said in your declaration that it was
10 June the 15th?

11 A. Yes.

12 Q. Mr. Bird, the flexo/litho interstation process
13 of the 363 patent, does it utilize interstation drying?

14 A. Yes.

15 Q. So if you refer back to supplemental declaration
16 of John Bird, Bird Exhibit 3.

17 A. Okay.

18 Q. You've testified that some of those meetings
19 related to drying -- the drying equipment?

20 A. Sure, of course.

21 Q. So if they related to drying and since drying
22 was part of the 363 process, would the meetings that they
23 were drying also relate to the process?

24 A. Absolutely.

25 MR. HARRIS: Object to the leading.

1 MR. WILSON: Object to as leading.

2 MR. PINKERTON: It's a little bit late, but
3 we'll just do it again.

4 MR. WILSON: Maybe I'll be quicker this
5 time. Go ahead.

6 MR. HARRIS: That's such blatant doings.

7 MR. PINKERTON: Well, we're just trying to
8 speed it along.

9 MR. HARRIS: I know.

10 MR. PINKERTON: It's an easy item.

11 Q. (By Mr. Pinkerton) Discussions about drying,
12 okay?

13 A. Uh-huh.

14 Q. What application, if any, would those have to
15 the 363 patent?

16 MR. WILSON: Objection. He is not
17 qualified to talk about the 363 patent. He's not a
18 patent attorney.

19 Q. (By Mr. Pinkerton) You can go ahead and answer.

20 MR. PINKERTON: You've asked about it all
21 day.

22 Q. (By Mr. Pinkerton) The 363 process, did I say
23 the patent? The 36 -- the process of the 363 patent?

24 A. Okay. Yes.

25 MR. WILSON: Same objection if you're going

1 to refer to the patent.

2 Q. (By Mr. Pinkerton) Go ahead.

3 A. The drying very much related to it, and that was
4 related to the high velocity hot air drying as it was to
5 the UV drying.

6 MR. WILSON: What drawing are we talking
7 about.

8 THE WITNESS: Drying system.

9 MR. PINKERTON: Drying.

10 MR. WILSON: Drying. I thought we were
11 talking about a drawing.

12 THE WITNESS: Sorry. You are right, our
13 accents are very different.

14 MR. WILSON: Yes.

15 Q. (By Mr. Pinkerton) The drying takes place
16 where?

17 A. It needs to take place immediately after the
18 application of either a water-based coating ink or UV
19 coating ink, slash ink.

20 Q. Did the subject matter of some of those
21 meetings, then, relate to drying as it applied to that
22 type of drying?

23 A. Yes.

24 MR. WILSON: Objection. Leading.

25 THE WITNESS: Yes, of course.

1 MR. WILSON: Asked and answered.

2 Q. (By Mr. Pinkerton) Okay. Thank you.

3 A. Yes, it does.

4 Q. Have you got Bird 27 in front of you?

5 A. Yes, I do.

6 Q. The exhibit shows in the lower left-hand corner
7 Graphic Arts Monthly June of 1995. Do you see that?

8 A. Yes, I do.

9 Q. Prior to June of 1995, to the best of your
10 knowledge, was there any discussion with Williamson about
11 participating to any extent in a publication?

12 A. Yes.

13 Q. And who would have been involved in that
14 discussion?

15 A. Jerry and Jesse.

16 Q. And what was the response?

17 A. They told us no.

18 Q. Okay.

19 A. They were not interested whatsoever.

20 Q. Okay. And to the best of your knowledge, did
21 they have any knowledge of this publication?

22 A. No.

23 MR. WILSON: Objection. No foundation.
24 Hearsay.

25 Q. (By Mr. Pinkerton) You found -- when did you

1 find out about this publication?

2 A. After the event, unfortunately. It was
3 interesting that it was -- when it was shown to me today,
4 I was -- as you recall, I answered the question that no,
5 we had not received permission and no, we hadn't
6 published anything.

7 What I was pleased to see there was that my
8 son's name was on there, and that brought everything back
9 to me. What had happened was that we had received a note
10 from Williamson Printing. They did not want to
11 participate in such a -- such an action.

12 And my son had been interviewed on the
13 phone and he had -- he had given these comments. And in
14 fact, the reason that I believe that they never saw it,
15 Williamson group did not see this was because it was my
16 hope and what I think turned into a reality was that they
17 would never see it. Because I was scared stiff that they
18 would see it having told us no, we shouldn't publish.
19 And it's my best belief that they never did see it
20 therefore.

21 Q. Okay. You had made mention of the fact that you
22 considered Mr. Williamson to be a visionary in the
23 printing field.

24 A. Yes.

25 Q. Can you explain what you mean by that, sir, and

1 I'm talking about Mr. Jesse Williamson?

2 A. Yes. I think he saw and sees opportunities with
3 the process. I think he sees and saw an opportunity, a
4 market area that other people don't see. He saw that, in
5 my opinion, with the WIMS process, if I'm allowed to call
6 it that, and with his improvement I think he has seen
7 that with the type of machinery he purchases.

8 He has been probably leading edge, first
9 time, on pretty well all the pieces of Heidelberg
10 equipment that he has. He has more printing units. He
11 has more innovative printing equipment on his floor
12 probably than any single, certainly, independent
13 corporation in the United States.

14 That's why I regard him very much as a
15 visionary. He's going to be taking delivery of the first
16 12-color machine in the world. That's the level.

17 Q. You said that you didn't recall any conversation
18 where Mr. DeMoore in a meeting with you and Mr. Griggs,
19 the patent attorney, might have said something about
20 Mr. Rendleman designing an interstation device?

21 MR. WILSON: Objection. Mischaracterizes
22 former testimony.

23 MR. PINKERTON: This is in fact --

24 MR. WILSON: And it's leading.

25 MR. PINKERTON: This is, in fact, what he

1 said, and he said he was not going to deny that that
2 might have happened.

3 Q. (By Mr. Pinkerton) Was that your --

4 A. Correct.

5 Q. Was that a correct statement of that testimony?

6 A. Uh-huh.

7 Q. You don't have any specific recollection of that
8 ever happening, do you?

9 A. No.

10 MR. WILSON: Objection. The record will
11 speak for itself --

12 MR. PINKERTON: Exactly.

13 MR. WILSON: -- as to what he said.

14 MR. PINKERTON: That's exactly what he
15 said.

16 MR. WILSON: Leading.

17 MR. PINKERTON: That's exactly what he
18 said.

19 Q. (By Mr. Pinkerton) If, if, if any conversation
20 like that would have happened --

21 MR. WILSON: Objection. Speculation.

22 Q. (By Mr. Pinkerton) If any conversation like
23 that would have happened, when would it have happened in
24 relation to the June 15 --

25 MR. WILSON: Objection. Leading.

1 MR. PINKERTON: -- meeting with Mr. Baker.

2 MR. WILSON: -- and calls for speculation.

3 You're laying down hypotheticals that are contradictory
4 to what you just said his testimony was.

5 MR. PINKERTON: These depositions are taken
6 according to the federal rules, and in the federal rules
7 we don't interrupt questions.

8 MR. HARRIS: You do.

9 MR. PINKERTON: I don't intend to.

10 MR. HARRIS: Well, you may not intend to,
11 and --

12 MR. PINKERTON: And I haven't today --

13 MR. WILSON: I'll tell you what.

14 MR. PINKERTON: Let me --

15 MR. WILSON: If he'll give me the same
16 pause that he gives you so that you can make your
17 objection, then I won't interrupt you. Because I didn't
18 spend six hours with this witness yesterday.

19 MR. HARRIS: Let's get on with it.

20 MR. PINKERTON: Is that --

21 MR. HARRIS: This guy has to get out of
22 here.

23 MR. PINKERTON: -- somehow coaching him
24 about something? I'm just asking for a common courtesy
25 under the rules. Let me finish the question and you can

1 make whatever objection you want.

2 MR. HARRIS: Then just give us a brief
3 pause.

4 MR. PINKERTON: That's fine. I'm not
5 intending to rush it.

6 MR. WILSON: I'll ask the witness to give
7 me a brief pause.

8 MR. PINKERTON: I'm not intending to rush
9 it.

10 MR. HARRIS: He has to cooperate in that
11 way --

12 MR. PINKERTON: I'm not intending to rush
13 it at all.

14 MR. HARRIS: -- if he will give a little
15 pause after.

16 MR. WILSON: Thanks.

17 Q. (By Mr. Pinkerton) I'll restate the question.
18 If there was some conversation like that, which you don't
19 recall today, but you say might have happened some time,
20 when would it have occurred in relation to the June 15
21 meeting with Mr. Baker and Mr. DeMoore?

22 MR. WILSON: Objection. Leading. Calls
23 for speculation. Posed as a hypothetical.

24 Q. (By Mr. Pinkerton) You can answer now.

25 A. It clearly had to take place and did take place,

1 if it took place after June 15, because we weren't in a
2 position to talk about such situations before that time.

3 Q. Okay. The --

4 MR. PINKERTON: She needs to change the
5 tape.

6 VIDEOGRAPHER: We're off the record at
7 2:49.

8 (Videotape change)

9 VIDEOGRAPHER: We're on the record at 2:52.

10 Q. (By Mr. Pinkerton) Mr. Bird, I'm going to hand
11 you what was marked in Mr. DeMoore's deposition as
12 Exhibit 6 and represent to you that it is a payment to
13 Mr. Griggs, a Printing Research accounts payable voucher,
14 and Mr. Griggs' billings for services that took place in
15 the month of July of 1994 and billed on August 3rd of
16 1994, okay?

17 MR. WILSON: Can I see a copy of it so I'll
18 know whether or not to object to your representation?

19 MR. PINKERTON: Yeah, and I don't have
20 another copy, but this is -- I'm going to hand this to
21 you. And it bears production numbers -- that sticker
22 might be over the first production number, I don't know.

23 MR. WILSON: It's up there on the check.

24 MR. PINKERTON: Okay. You're right. I'm
25 sorry. It's PRI01668 through 01685. And I apologize I

1 don't have another copy of it.

2 MR. WILSON: No objection.

3 Q. (By Mr. Pinkerton) Let me show you page
4 PRI01672. At the bottom of that page it refers to what
5 is an attorney's docket number, B5900, and a title of
6 that docket number, which is offset lithography utilizing
7 aqueous ink.

8 A. Okay.

9 Q. Do you see that?

10 A. Yes, I do.

11 Q. Okay. And you can flip to the next page. You
12 see there's some time entries relating to that?

13 A. Yes.

14 Q. Those time entries refer to a specification
15 being prepared?

16 A. Correct.

17 Q. Okay. Let me ask you, first of all, that title,
18 is that -- that title of that particular file one that
19 you are familiar with?

20 A. Yes.

21 Q. It is?

22 A. Yes.

23 Q. Okay.

24 A. And I now where the July -- I think I know where
25 July might be.

1 Q. Let me ask you to explain what is the meaning of
2 that title to you?

3 A. It's -- it was an idea that I'd come up with
4 while I was at a conference, which employed the use of
5 water-based inks, flexo type inks, if you like, the
6 water-based inks that we would apply to a waterless
7 printing plate might be another conference and all the
8 talk had been about waterless printing where you take a
9 hydrophobic and a hydrophilic surface and you apply
10 oil-based ink, and then the hydrophilic areas on that
11 plate, the ink collects and it's rejected from the --
12 from the oleophilic. It goes into the oleophilic areas
13 and comes -- and is rejected by the oleophobic areas,
14 that printing ink.

15 It occurred to me that evening after
16 attending the conference that since the base material was
17 aluminum, and would therefore be hydrophilic, and that
18 the surface coating on that material, plate material, was
19 silicone, that that would be hydrophobic. And so my
20 idea, my concept was that you could actually run
21 water-based inks on a waterless printing plate,
22 therefore, and these discussions were around that process
23 and that product.

24 Q. Okay.

25 A. With a view to filing a patent.

1 Q. Was a patent application actually filed?

2 A. Yes.

3 Q. And who were the named inventors on that
4 application?

5 A. John Bird and Howard DeMoore.

6 Q. Was Mr. DeMoore involved at all in the concept
7 leading to that invention that you have described?

8 A. No.

9 Q. Who made the decision for Mr. DeMoore to be
10 listed as one of the co-inventors?

11 A. Mr. DeMoore owns the corporation and Mr. DeMoore
12 has the -- is listed as the inventor.

13 Q. It was his decision to make; is that what you're
14 saying?

15 A. It certainly wasn't my decision.

16 Q. And so an application was filed listing you and
17 Mr. DeMoore; is that right?

18 A. Correct.

19 Q. And what's your belief about whether or not
20 Mr. DeMoore should have been a co-inventor on that
21 patent?

22 A. Shouldn't have been.

23 Q. Okay. But who made the decision to add him as a
24 co-inventor?

25 MR. WILSON: Objection. Asked and

1 answered.

2 MR. PINKERTON: I'll withdraw it.

3 Q. (By Mr. Pinkerton) Was a patent ever issued
4 pursuant to that application?

5 A. No.

6 Q. Was the subject matter -- strike that.

7 Let me get you to look now back to -- hold
8 on to that, please.

9 A. Okay.

10 Q. Exhibit 37, the attorney docket number on the
11 application relating to the cantilevered device is what?

12 A. B6012.

13 Q. And the attorney docket number on the previous
14 page? The other way.

15 A. That would be previous.

16 Q. The attorney docket number there is what?

17 A. B --

18 Q. Down at the bottom of the page?

19 A. B5900.

20 Q. Right. Different attorney docket numbers?

21 A. Yes.

22 Q. So was the subject matter of the application of
23 B5900 different than the subject matter for --

24 A. Yes.

25 Q. -- B6012?

1 A. Yes.

2 Q. Okay. Thank you.

3 MR. WILSON: Are we going to leave that as
4 an exhibit? Are we going to make this DeMoore exhibit an
5 exhibit to this? I prefer so that we don't have to go
6 searching.

7 MR. PINKERTON: That's fine, if you want
8 to. We can mark it as what Bird 38 --

9 MR. WILSON: 39.

10 MR. PINKERTON: 39.

11 MR. WILSON: Some day, Mr. Bird, we're
12 going to give you a memorialized copy of this hard bound.

13 THE WITNESS: Don't bother.

14 MR. WILSON: Printed both flexographically
15 and lithographically.

16 MR. PINKERTON: In one pass.

17 What was 38? Oh, the Daytimer.

18 (Deposition Exhibit 39 marked)

19 Q. (By Mr. Pinkerton) There was a reference in
20 your deposition before to some gold sheets that were --
21 or some sheets where some gold was printed on them at
22 Printing Research and that those gold sheets had been
23 shown at some point in time to Jesse Williamson?

24 A. Yes.

25 Q. Okay. And I'll go back and show you what has

1 previously been marked or I guess we'll just mark this as
2 well. This is PRI00699.

3 MR. PINKERTON: I don't think it was marked
4 his deposition. I don't know if it was or not, was it?

5 MR. WILSON: I think it might have been.

6 MR. PINKERTON: Okay.

7 MR. WILSON: I think it's Exhibit 16.

8 MR. PINKERTON: That's probably right.

9 MR. WILSON: Printing Research,
10 Incorporated, demonstration form dated 12-20/21-94.

11 MR. PINKERTON: 699 and 70.

12 MR. WILSON: It doesn't give a --

13 MR. PINKERTON: I think that's right. So
14 we'll mark it at 16A, Steve, let's do that.

15 MR. WILSON: Okay.

16 (Deposition Exhibit 16A marked)

17 Q. (By Mr. Pinkerton) Take a look at 16A. Do you
18 recall that, Mr. Bird?

19 A. Yes, I do.

20 Q. And it reflects something that was done at PRI
21 on what dates approximately, there?

22 A. We show the demonstration actual dates were
23 12-20 slash 21, '94.

24 Q. Okay.

25 A. A two-day period.

1 Q. In regard to the sheets that were printed on
2 gold with some gold that you had shown to Mr. Jesse
3 Williamson --

4 A. Yes.

5 Q. -- what customer or potential customer, let's
6 say, of Printing Research, if any, would that gold have
7 been printed on?

8 MR. WILSON: Objection. Vague. I don't
9 understand the question.

10 MR. PINKERTON: That was kind of inartful.

11 Q. (By Mr. Pinkerton) The gold sheets that you
12 believe you showed to Mr. Williamson, okay, were they
13 printed at about the time that you were working with any
14 particular customer, as far as you recall?

15 A. This was done for Williamson Printing.

16 Q. Right, the 16A?

17 A. Right.

18 Q. I'm not asking you about 16A. I just wanted you
19 to note the date of 16A, okay?

20 A. Okay.

21 Q. Do you see a reference on 16A to Rexham?

22 A. Yes, I do.

23 Q. Okay. Previously had Rexham been a potential
24 customer or a customer of Printing Research?

25 A. Yes.

1 Q. Okay. And had there been some activity for
2 Rexham at Printing Research?

3 A. Yes.

4 MR. WILSON: Objection. Leading.

5 Q. (By Mr. Pinkerton) Was there any samples
6 printed?

7 A. Yes.

8 Q. And what were those samples?

9 A. We printed some -- there was some gold -- we did
10 some metallics, we did some pearlescents, but the real
11 issue was the metallics. We had become aware from John
12 Lapamarta slash Rexham Corporation that they had a great
13 interest in a conversion of their coating system on their
14 Komori printing press, and I was actively trying to sell
15 them a circulation system that I had test marketed and
16 talked to John Lapamarta about.

17 I knew of his interest in Groveer and flexo
18 processes, and he had told me that he was very interested
19 in purchasing such a device from -- he had been a
20 previous customer of mine from years before, so it was a
21 natural relationship that we had.

22 He had sent in some ink and some plates
23 that he wanted us to test for him and it was at the test
24 scenario that we discovered that he was wanting to apply
25 metallics on the sheets.

1 Q. And were some metallics applied?

2 A. He supplied some metallics.

3 Q. I'm sorry. Were they applied?

4 A. Oh, they were applied, yes.

5 Q. At Printing Research?

6 A. At Printing Research.

7 Q. End of press?

8 A. End of press.

9 Q. With what type -- with what unit?

10 MR. WILSON: Objection. Leading.

11 THE WITNESS: They were -- as it indicates
12 at the top of the sheet, they were applied with an EZB,
13 which was the only device we had on that machine.

14 Q. (By Mr. Pinkerton) And Where was that device?

15 MR. HARRIS: I think it's garbled at the
16 top of the sheet. He picked up that sheet.

17 MR. PINKERTON: The sheet being 16A.

18 THE WITNESS: Sorry.

19 MR. WILSON: That test doesn't refer to --

20 THE WITNESS: No, no, but --

21 MR. HARRIS: I'm confused about what the
22 witness --

23 THE WITNESS: But I'm saying on the sheet
24 it would always be -- it will always be noted.

25 MR. WILSON: Right, but this sheet does not

1 apply to the test that you're talking about.

2 MR. PINKERTON: I didn't think he was --

3 Q. (By Mr. Pinkerton) Were you implying that?

4 A. I don't think I was either, but --

5 Q. Yeah. So in relationship -- so with respect to
6 the Rexham activity, you said gold was put on the sheet?

7 A. Was applied, yes.

8 Q. Okay.

9 A. And --

10 Q. Now, when in relationship to that activity would
11 any samples have been shown to Mr. Williamson?

12 A. Almost directly after that, whenever that test
13 period was, and it would have to be late fall. It would
14 have been -- I would estimate that based on the fact that
15 this test was run 12-20, I would say that we would have
16 ran the test for John somewhere in October-ish, I would
17 guess.

18 Q. Okay.

19 A. I don't -- without going through Daytimers,
20 etcetera, and that might not even be noted there, but
21 that would be my estimate of when that would have
22 occurred.

23 Q. Okay. And what would have been your purpose in
24 taking the sample to Mr. Williamson?

25 A. Well, because we had been speaking about his

1 WIMS process, and I was wanting to demonstrate to him
2 that we had managed to put down metallics with a flexo
3 applicator and that was this something I should be as
4 exited as I was about.

5 Q. At that point in time you had been talking to
6 him about what process in the fall of '94?

7 A. Fall of '94 we had been talking about the WIMS
8 and the improvement WIMS process.

9 Q. And were you showing him that in regard to --
10 how would that have related to the improved WIMS process?

11 A. Well, because that was -- we --

12 MR. WILSON: Objection. How would what
13 have related to improved WIMS?

14 Q. (By Mr. Pinkerton) How would showing the
15 samples have related to the WIMS improved process?

16 A. Because he was talking about with the fact that
17 he wanted to use a flexo type application, we had now
18 actually printed coated metallic on sheets and we were --
19 I was wanting to demonstrate to him the practicality of
20 that desire, but yes, we had, in fact, been able to do
21 that.

22 Q. Okay.

23 MR. HARRIS: Let us take a minute --

24 MR. PINKERTON: I'm sorry.

25 MR. HARRIS: -- to figure out what we're

1 going to do.

2 MR. PINKERTON: Can I finish?

3 MR. HARRIS: We'll have a little bit of
4 redirect. You can certainly finish.

5 MR. PINKERTON: Can I finish? I mean, I --

6 MR. HARRIS: You can finish, but --

7 MR. PINKERTON: I've only had now an hour
8 and y'all have had an abundant time than that. I've
9 got more time --

10 MR. HARRIS: I'm not arguing that with you.
11 I'm saying what can we do.

12 MR. PINKERTON: Oh, you just want a caucus.

13 MR. WILSON: You brought in some whole new
14 exhibits that --

15 MR. HARRIS: Well, never mind all that.
16 What do you want to do? I mean, we -- I don't mind going
17 up to New York. It's a pretty good place. It's getting
18 a little cold, but --

19 THE WITNESS: We'd be very happy to have
20 you.

21 MR. HARRIS: Thank you.

22 MR. PINKERTON: Well, I don't know. I had
23 requested half of the time for this deposition. You have
24 declined to agree to that. I've tried to be --

25 MR. HARRIS: I know all of that.

1 MR. PINKERTON: I've tried to be
2 reasonable.

3 MR. HARRIS: So what are we going to do?

4 MR. PINKERTON: I've tried to be
5 reasonable, and my thought was that we were finishing
6 this deposition today.

7 MR. HARRIS: Well, then can you finish
8 pretty soon?

9 MR. PINKERTON: I don't think so.

10 MR. HARRIS: We have about, I would say, 15
11 minutes.

12 MR. PINKERTON: I don't think so.

13 MR. HARRIS: 15 minutes of
14 cross-examination.

15 MR. PINKERTON: I don't think I can finish
16 pretty soon, because I wasn't provided more than, what,
17 an hour and a half, an hour and 25 minutes.

18 MR. HARRIS: Poor John.

19 MR. PINKERTON: It's my turn.

20 MR. HARRIS: I don't doubt that it's your
21 turn. That's not an issue.

22 MR. PINKERTON: Let me proceed.

23 MR. HARRIS: Okay. We'll see where it
24 goes.

25 (Discussion off the record)

1 Q. (By Mr. Pinkerton) In the period -- you went to
2 work for PRI in 1991?

3 A. Right.

4 Q. In the period from 1991 through 1994, okay, that
5 time period, did Printing Research manufacture in house
6 and sell any coaters?

7 A. Yes.

8 Q. And which ones were those?

9 A. Several EZ coaters, several, maybe four or five,
10 and several plate blanket coaters, and that was probably
11 about it.

12 Q. Now, the EZ coater you previously talked about,
13 that's the one that went down in the delivery?

14 A. In the delivery, yes.

15 Q. And when, to the best of your knowledge, did
16 that product begin to be sold by PRI?

17 A. '90 -- probably the first one sold was probably
18 late '91, late '91, probably.

19 Q. And did that continue into 1994, to the best of
20 your knowledge?

21 A. We didn't sell that many. And I think I stated
22 before they weren't very successful, so I'm not sure
23 how -- whether they would have been being sold into '94
24 or whether they would have -- we would have basically
25 dropped that product from our mix. Although we were

1 advertising it, we really didn't have any faith in its
2 ability to produce.

3 Q. As of February 11th of 1995 had Printing
4 Research itself ever constructed and sold an auxiliary
5 retractable coater with an anilox roller and chambered
6 doctor?

7 A. I don't believe so.

8 Q. How would you describe Printing Research's
9 capabilities with respect to auxiliary retractable
10 coaters in the late 1994, early 1995 time frame?

11 A. There had been a construction of a retraction
12 system that was very similar to that of the plate blanket
13 coater that we had brought with us, but other than that I
14 don't recall any real knowledge, if you can call it that,
15 of retraction systems.

16 Q. The one you brought with you, is that the one
17 that was covered by your patent?

18 A. Yes.

19 Q. That was the end-of-press retractable?

20 A. Yes.

21 Q. Three roll coater?

22 A. Yes.

23 Q. Known as the PBC coater?

24 A. Yes.

25 Q. Okay. Was there any other retraction systems

1 other than that?

2 A. I think that probably the first other retraction
3 system that was built, which again was very similar in
4 concept to, if I can refer to it as my PBC, plate blanket
5 coater, is -- was the -- it was an anilox roll coater
6 that had been made using a similar retraction system, and
7 that was what we were referring to as EZB or the EZ
8 blanket coater.

9 Q. Okay.

10 A. But it had not been sold. I mean, it was an
11 experimental unit essentially on our machine at the
12 plant.

13 Q. It had not been sold as of February of '95?

14 A. I don't believe so.

15 MR. WILSON: Objection. Leading.

16 Q. (By Mr. Pinkerton) When was the first time that
17 you believe that it was sold?

18 A. I think the first one we sold was actually
19 Williamson Printing.

20 Q. In terms of an EZ coater?

21 A. It became an EZB, which was the first blanket
22 interstation coater, first real coater that you could say
23 we had supplied to a customer as a retraction -- with a
24 retraction system.

25 Q. That's Printing Research?

1 A. Yes.

2 Q. Okay.

3 A. Yes.

4 Q. Previously in your deposition there had been a
5 question about -- where you said you had been -- you
6 thought you might have been in a meeting with a patent
7 lawyer where there was a notion expressed about using
8 something that turned out to be the Rendleman coater for
9 a process where there was flexography and then
10 lithography. That notion, whose notion was that that you
11 were referring to, the notion of the process?

12 A. Well, it was Williamson Printing.

13 Q. And once again, at Williamson who was --

14 A. Jesse Williamson and Bill Davis.

15 MR. WILSON: Objection. It's not clear
16 what part of his testimony you're talking about.

17 MR. PINKERTON: Specifically it's page 179
18 and 180.

19 MR. WILSON: Was that of the earlier
20 transcript?

21 MR. PINKERTON: Yes.

22 MR. WILSON: Can you show him the
23 transcript so he knows --

24 MR. PINKERTON: You are welcome to do that,
25 if you would like to.

1 MR. WILSON: Well, I would like to take him
2 on voir dire whether he understood your question or
3 whether it was coached. May I do that?

4 MR. PINKERTON: No. You can cross him.

5 MR. HARRIS: I'm glad to hear that.

6 MR. WILSON: I'm glad to hear it, too.

7 MR. PINKERTON: You got a copy of the
8 deposition?

9 MR. WILSON: I do.

10 MR. PINKERTON: We'll ask him about it.
11 Let's put it in front of him.

12 MR. WILSON: I want an opportunity to cross
13 him on it.

14 MR. PINKERTON: You want to do it on cross,
15 whichever you want to do. We don't have time for much.
16 That's why I'm trying to hurry.

17 MR. HARRIS: Well, go on and we'll do it on
18 cross if we can. If it's wrong, we'll figure it out
19 later.

20 Q. (By Mr. Pinkerton) Take a look at Bird
21 Exhibit 2, please.

22 A. Okay.

23 Q. That's your declaration.

24 A. Okay.

25 Q. And the title of that is what?

1 A. Combination -- combined lithographic
2 flexographic printing apparatus and process, declaration
3 of John Bird.

4 MR. WILSON: You have the right one.
5 Declaration of John Bird.

6 Q. (By Mr. Pinkerton) Take a look at paragraph 13.
7 Read the first sentence, please.

8 A. I suggested that my colleagues start working
9 towards an acceptable flexographic printer/coater for use
10 with Davis Williamson's 363 process.

11 Q. And the colleagues that you refer to there are
12 colleagues where?

13 A. At Printing Research.

14 Q. Colleagues at Printing Research. And the next
15 sentence, would you --

16 A. "In the late fall of 1994 pursuant to my
17 recommendations, PRI did start working on what we termed
18 in house as the Rendleman coater. The first prototype
19 being a cantilevered short arm device that would fit on
20 an end of press Heidelberg manufactured coating tower of
21 the first Heidelberg press to arrive at Williamson, the
22 so-called seven-color Heidelberg CD."

23 Q. Okay. So in terms of where you suggested to
24 your colleagues there at PRI that you start working on
25 that flexographic unit for the Davis and Williamson

1 process --

2 A. Sure.

3 Q. -- those colleagues would include who?

4 A. They would include Howard DeMoore, Steve Garner,
5 whether Ron would be involved I'm not sure, but there is
6 certainly a whole group of people.

7 Q. Okay. Do you recall that there were these
8 so-called negotiations on something called exclusivity
9 back in May, June, July, August, and September, October,
10 November of '95 time frame?

11 A. Uh-huh.

12 Q. And had Printing Research begun marketing
13 activities with respect to the coater as of that time?

14 A. What time frame is this?

15 Q. The May through October of '95 time frame, to
16 the best of your knowledge?

17 A. Yes we had, yes.

18 Q. I think you previously testified to this, but
19 just to complete the record I'll ask you: Was a final
20 agreement on exclusivity ever reached?

21 A. No.

22 Q. Mr. Bird, to the best of your knowledge in 1995
23 did anybody at Printing Research seek advice of counsel?
24 I'm not asking for the advice of counsel, but did they
25 ever go to an attorney and seek advice of counsel as to

1 whether or not Printing Research had a duty to disclose
2 to Williamson the fact that it was going to file an
3 application?

4 A. Not that I'm aware of.

5 MR. WILSON: Objection. Calls for
6 speculation.

7 Q. (By Mr. Pinkerton) What contribution, if any,
8 did Mr. DeMoore make to the flexo/litho process of the
9 363 patent?

10 MR. WILSON: I think that's asked and
11 answered in the previous deposition.

12 MR. PINKERTON: Okay. We don't need to go
13 into it if it's been asked and answered.

14 THE WITNESS: I'd rather not answer it.

15 MR. PINKERTON: Unless you've got something
16 pressing, we'll pass the witness here so they can ask a
17 few questions -- wait a minute.

18 We'll pass the witness. We're not through
19 with the examination. I am passing the witness only to
20 try to accommodate you and give you some more time before
21 Mr. Bird has to leave.

22 MR. WILSON: Well, if we're not through,
23 then we might as well just agree to have it another day.
24 I would like to ask him about this new --

25 MR. PINKERTON: I can't agree to another

1 day. We've had two days --

2 MR. HARRIS: You can't have it both ways.

3 MR. WILSON: Well, then I'll ask some
4 questions and we'll decide.

5 MR. PINKERTON: I'm doing to best I can to
6 accommodate you.

7 MR. WILSON: We appreciate it.

8 MR. HARRIS: It's not a question of whether
9 you're doing the best you can. The point is that that
10 isn't good enough.

11 MR. PINKERTON: It's good enough for me.
12 Depending, again, based on what you all gave me.

13 MR. HARRIS: What do you think about
14 continuing the deposition by telephone? There is very
15 little left. We might have five minutes here or
16 something like that and you can do a little more and we
17 can do a little more.

18 MR. PINKERTON: I'll be glad to take that
19 up with you at a later time, but I want to discuss it. I
20 don't want to agree to it now.

21 MR. WILSON: Okay. Couple of questions.

22 EXAMINATION

23 BY MR. WILSON:

24 Q. You have this exhibit that's the patent
25 application. Can you -- he hasn't provided me another

1 copy. Can you tell me what exhibit number it is for the
2 record there? It's on the front.

3 A. Exhibit Number 37, Bird 37.

4 Q. And Mr. Pinkerton had you go through that
5 exhibit and mark things that you thought had something to
6 do with the 363; is that right?

7 A. Yes.

8 MR. PINKERTON: Objection to the form of
9 the question.

10 Q. (By Mr. Wilson) And you did that yesterday in
11 your six-hour conference; is that right?

12 MR. PINKERTON: Object to the form of the
13 question.

14 THE WITNESS: It was done yesterday.

15 Q. (By Mr. Wilson) It was done yesterday?

16 A. Yes.

17 Q. Okay. I would like to go back and look at Bird
18 Exhibit Number 3. This is your supplemental declaration.
19 I'm going to ask you to hand this back to me because
20 that's my copy, but if you would look at paragraph nine,
21 please, and --

22 MR. PINKERTON: Which one, Steve? I'm
23 sorry.

24 MR. WILSON: It's --

25 MR. PINKERTON: Second supplemental?

1 MR. WILSON: No, the first supplemental.

2 THE WITNESS: It's Bird Exhibit 3.

3 Q. (By Mr. Wilson) Would you read paragraph nine
4 there?

5 A. "I notice that the priority date of EP741025A3,
6 Exhibit B hereto, is May 4, 1995, which is consistent
7 with my recollection that Printing Research filed a
8 patent application on the cantilevered device or Ferris
9 wheel in the spring of '95. I note the prior application
10 is serial number 435798. I did not intend to claim the
11 Davis/Williamson process, and to the best of my knowledge
12 no one at PRI indicated in 1995 that they intended to
13 claim the Davis/Williamson 363. Those 363 processes
14 aspects taught in EP741025A3 as opposed to the teachings
15 concerning the cantilevered device or Ferris wheel came
16 from the discussions with Bill Davis and/or Jesse
17 Williamson indicated above started in August of 1994."

18 Q. Okay. So there was no intention to claim
19 those --

20 A. No.

21 Q. -- is that your testimony?

22 A. Yes.

23 Q. Okay. And if we look at that exhibit -- is
24 it 37?

25 A. Yes.

1 Q. And you go back to the pictures. You didn't
2 highlight the device, the cantilevered device, did you?

3 A. No.

4 Q. And you didn't highlight the motion on those
5 drawings, did you?

6 A. Correct.

7 MR. PINKERTON: He wasn't asked to refer to
8 the pictures. He was asked specifically, and that's in
9 the record, he was asked to look at the specification and
10 talk about process.

11 MR. WILSON: Are you answering the
12 question?

13 MR. PINKERTON: I am explaining, once
14 again, what was on the record before.

15 MR. WILSON: Okay.

16 MR. PINKERTON: You are misstating --

17 MR. WILSON: The record speaks for itself.

18 MR. PINKERTON: It will speak for itself.

19 Q. (By Mr. Wilson) Okay. So you did not intend to
20 highlight --

21 A. Just so that you know, when we ended the
22 meeting, the last deposition, in fact, this was the last
23 thing on the table by Mr. Bill Harris.

24 Q. Okay.

25 A. I was asked by Mr. Bill Harris to review this

1 document.

2 Q. And with what purpose?

3 A. He was asking me to familiarize myself with it,
4 because if you recall it ended on a -- we were having to
5 get out the door.

6 Q. Right. So you familiarized yourself with it?

7 A. I familiarized myself, yes.

8 Q. And then yesterday you spent some time
9 highlighting it at Mr. Pinkerton's request; is that
10 correct?

11 A. Yes.

12 Q. And did Mr. Pinkerton help you do those
13 highlights?

14 A. No. What happened was -- and again, it was all
15 part of the question by Mr. Bill Harris where he
16 wanted -- he had asked me to find the parts that I found
17 were -- I can't remember the exact question, but it was
18 based on what parts of this did I feel were Williamson
19 process steps.

20 Q. Okay. But your testimony today --

21 A. Because I wasn't familiar with it.

22 Q. I understand. I'm sorry, did I cut you off?

23 A. No, no.

24 Q. But your testimony today, and I think that's
25 what this paragraph nine you just read says, if I don't

1 misunderstand, is that there was no intention to claim
2 those, that you know of?

3 A. That's right.

4 Q. Okay. I believe you testified earlier that you
5 thought -- that you now recall that Jesse Williamson had
6 decided not participate in this Graphic Arts --

7 A. He told me that he did not want to participate
8 in that.

9 Q. Did you notice that he's quoted in it?

10 A. He may well be. But what you have to understand
11 is how that is put together. It's put together --

12 Q. Do you know how it's put together?

13 A. Yes, I do.

14 Q. Then if it was done with a telephone
15 conversation, then he participated, didn't he?

16 A. Well, he may have not.

17 Q. You don't really know one way or the other, do
18 you?

19 A. Oh, no, but he --

20 Q. Okay.

21 A. Okay.

22 Q. There was a lot of discussion about whether or
23 not you looked at your Daytimer when
24 these declarations --

25 A. The first declaration.

1 Q. -- were done, right.

2 And that's exactly what I want to go to is
3 that what we didn't discuss is whether you'd looked at
4 your Daytimer when you made the second -- I'm sorry, the
5 first supplemental declaration, and that is Bird
6 Exhibit 3. Had you looked at your Daytimer?

7 A. Well --

8 Q. You had to have to have listed those dates; is
9 that right?

10 A. Sure, absolutely.

11 Q. But in this supplemental declaration, as we
12 established earlier, I think, there is no mention of this
13 June 15th day as being the certain day?

14 A. It's June 12th. I mean, we -- we have already
15 established that that was a typo.

16 Q. No, no. You are misunderstanding my question.
17 The drift of the earlier questions, if I understood them,
18 was that after you looked at your Daytimer then you could
19 nail down that it was June?

20 A. Uh-huh.

21 Q. And what I'm asking you is, in fact, it's not
22 your Daytimer that tells you it was June. The only thing
23 that you can conclude -- makes you conclude it was June
24 is these receipts that you were handed because your
25 Daytimer doesn't tell you that, does it?

1 MR. PINKERTON: Object to the form of the
2 question as mischaracterizing the previous testimony and
3 the predicate on which it was laid.

4 MR. HARRIS: It's cross-examination.

5 MR. WILSON: I'll rephrase the question.

6 Q. (By Mr. Wilson) Does your Daytimer that you
7 reviewed, does it tell you conclusively, standing alone
8 by itself --

9 A. No.

10 Q. -- that the Baker meeting occurred on June 12th?

11 A. No, it does not.

12 Q. Or that you told Howard DeMoore on June 15th?

13 A. No, it does not.

14 Q. Okay. And, in fact, what brought you to that
15 conclusion, as you say in your second supplemental
16 declaration, was these receipts that you were shown?

17 MR. PINKERTON: Object to the form.

18 Q. (By Mr. Wilson) Is that a fact?

19 MR. PINKERTON: He has already testified
20 about the Daytimer and the receipts and that's what's in
21 there.

22 Q. (By Mr. Wilson) You nodded your head, was that
23 a yes?

24 A. Yes.

25 Q. Okay. And you have no personal knowledge about

1 the authenticity of those receipts, do you?

2 A. No, I don't.

3 MR. PINKERTON: One question, out of
4 fairness. Your Daytimer indicates you were in town from
5 the 12th to the 15th.

6 THE WITNESS: Absolutely.

7 MR. PINKERTON: And your recollection was
8 refreshed about being in town during those dates, right?

9 THE WITNESS: Yes.

10 MR. PINKERTON: So is that part of the
11 basis for your testimony that it was the 15th?

12 THE WITNESS: Part of the basis of that
13 testimony that it is the 15th is that I knew that there
14 was a reason that I couldn't be in town to go on the --
15 on that trip, the demonstration, and when you put the
16 dates together and you put the receipts and the timing,
17 everything makes absolute sense as to why and how that
18 had to be that date.

19 MR. WILSON: Let me ask one more question.

20 MR. PINKERTON: Let him follow-up.

21 Q. (By Mr. Wilson) July shows that you were home
22 for the entire month, too, doesn't it?

23 A. July shows nothing because I don't have July.

24 Q. Ah, but we have that calendar at the end of June
25 that shows what you plan ahead for July, and it shows

1 only one appointment, right?

2 A. It shows one appointment, but that doesn't mean
3 to say that I don't have appointments.

4 Q. Did you travel out of town in July?

5 A. I have no idea.

6 Q. So it's possible you were home in July?

7 A. It's possible I was home and it's possible that
8 I was away. I fail to see the significance of that,
9 but --

10 MR. PINKERTON: I think we're at a time
11 where we should break for Mr. Bird.

12 MR. WILSON: I have just one request about
13 this exhibit, if it's going to be made an exhibit --

14 MR. PINKERTON: It already is an exhibit.

15 MR. WILSON: Well, yeah, I would prefer to
16 have it initialed where he has highlighted so there is no
17 question about what was highlighted.

18 MR. HARRIS: Are you ready to say no
19 further questions and terminate the deposition?

20 MR. PINKERTON: We're at a time where we've
21 committed to Mr. Bird that he would be able to leave.
22 It's actually late. We extended here to finish that one
23 area.

24 MR. WILSON: I think I have one more
25 question and it has to go to the Daytimers.

1 THE WITNESS: Will you send them back to
2 me, please?

3 Q. (By Mr. Wilson) And that's exactly what the
4 question is. Mr. Pinkerton was asking you if you had
5 maintained these in your possession, that they are
6 business records that you normally kept and you said yes,
7 and he said and you've maintained them and you said yes.
8 And in fact, you have left them in his custody for a
9 considerable point in time --

10 A. No, no.

11 Q. And in my custody for a considerable point in
12 time; is that fair?

13 A. They've been in your custody a lot longer.

14 Q. You remember when we were here --

15 MR. PINKERTON: Wait a minute. Counsel,
16 let him answer the question, please.

17 MR. WILSON: He did.

18 MR. PINKERTON: He said no. Explain your
19 answer.

20 Q. (By Mr. Wilson) Have they been in
21 Mr. Pinkerton's custody out of your sight?

22 A. For a short space of time.

23 Q. For how long?

24 A. Maybe couple of weeks max.

25 Q. Okay. So they weren't maintained in your

1 custody continuously?

2 MR. PINKERTON: I didn't ask him that.

3 THE WITNESS: Come on, Steve, I need to go.

4 MR. WILSON: I know you need to go, and I
5 appreciate your time. I think I'm done.

6 MR. PINKERTON: Can he have the Daytimers
7 now?

8 THE WITNESS: I would like them sent to me.

9 VIDEOGRAPHER: We're off the record at
10 3:37.

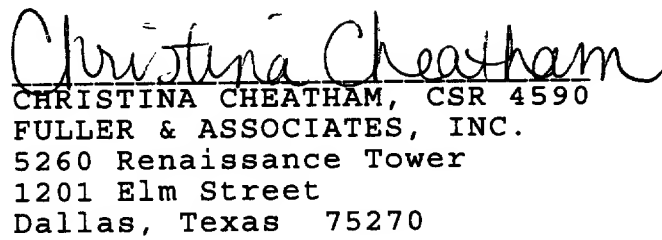
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STATE OF TEXAS X

COUNTY OF DALLAS X

I, Christina Cheatham, a Certified Shorthand Reporter duly commissioned and qualified in and for the State of Texas, do hereby certify that there came before me on the 20th day of November, 2000, at the offices of Worsham, Forsythe & Wooldridge, located at 1701 Bryan Street, Energy Plaza, 30th Floor, in the City of Dallas, County of Dallas, State of Texas, the following named person, to-wit: JOHN BIRD, who was duly sworn to testify the truth, the whole truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; and that he was thereupon examined upon his oath and his examination reduced to typewriting under my supervision; that the deposition is a true record of the testimony given by the witness, and signature of witness is to be before any notary public.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

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